97th Congress
2d Session

COMMITTEE PRINT

A LEGISLATIVE HISTORY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (SUPERFUND), PUBLIC LAW 96-510

TOGETHER WITH

A SECTION-BY-SECTION INDEX

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CHAPTER III

H.R. 7020

I

96TH CONGRESS
2D SESSION

H. R. 7020

To amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1980

Mr. FLORIO introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

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A BILL

To amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of throughout the United States in a manner which has resulted in, and which may in the future result in, dangerous releases;

(2) the exact location of many such hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) releases of hazardous waste can cause harm to public health and safety and the environment;

(5) modern disposal practices using the existing state of the art of technology permit containment of dangerous releases from hazardous waste sites; and

(6) a systematic method of funding for purposes of identifying, containing, and taking other remedial actions with respect to hazardous waste sites is necessary to protect public health and safety in a cost effective manner.

GOALS

SEC. 4. The goals of this legislation are to—

(1) provide for a State-by-State inventory of hazardous waste disposal sites and the condition of such sites;

(2) evaluate such sites, and set priorities among the sites, based on the danger they present;

(3) establish a program to assure the containment of dangerous releases from hazardous waste sites;

(4) accelerate the elimination of the presence of any unsafe hazardous waste disposal sites; and

(5) provide a systematic program of funding for the identification of hazardous waste disposal sites, the evaluation of such sites, and for the containment and other remedial action with respect to such sites to assure protection of the public health and safety and the environment in a cost effective manner.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued (other than a permit which is treated as being issued under section 3005(e)) and for which no permit under 3005 is required (other than such a permit treated as being issued under section 3005(e)).

"(2) 'Petrochemical feedstock' means liquid or gaseous hydrocarbon used primarily for the preparation of more complex chemicals, that is, ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, and methane other than that used to make ammonia.

"(3) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle (other than an activity pursuant to a permit treated as having been issued under section 3005(e)), or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(4)(A) 'Supply' means, with respect to petrochemical feedstocks or inorganic elements and compounds, the production, manufacture, or importation of such feedstocks or compounds.

"(B) 'Supplier', with respect to petrochemical feedstocks or inorganic elements and compounds, means any person who supplies such feedstocks or compounds and who either—

"(i) provides, through sale or any other means, the feedstocks or elements and compounds to other persons, or

"(ii) uses the feedstocks or elements and compounds himself.

"(5) The terms 'inorganic elements and compounds', 'crude oil', and 'refiner' shall have the meanings prescribed by the Administrator, by rule.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of

1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or determinable by, such person. Such information shall be provided within six months after the date of the enactment of the Hazardous Waste Containment Act of 1980.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site and whether any damages have occurred in connection with the releases, and (iii) the nature of any other activity being carried out at such site;

(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

(3) Where any person fails to comply with the requirements of paragraph (1) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (1) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste. The State or the Administrator

may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

(4) Each Federal department, agency, or instrumentality which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of shall provide the information described in paragraph (2) to the Administrator to the extent such information is known or determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the

Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) an estimate of the population at risk at each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $20,000,000 for the fiscal year 1981.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the the Hazardous Waste Containment Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for purpose of establishing the national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person who owns any inactive hazardous waste site shall, in such manner and at such time as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person (A) who sold the site to the owner after

January 1, 1980, or (B) who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records relating to compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3062(c).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1) Whenever any hazardous waste is released into the environment from or at any inactive hazardous waste site in any manner which, in the judgment of the Administrator, may present an unreasonable risk to public health or the environment, or whenever there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator may by order require any responsible party to take such action in whole or in part. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take such action.

"(2) Whenever the Administrator determines that an inactive hazardous waste site may present an unreasonable risk to public health or the environment, he may, after notice and opportunity for written or oral public comment, relocate, contain, and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary. Such remedial action may also include assessment of the injury to any natural resources resulting from the release or threatened release, restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 percent of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence. The

Administrator may by order require any responsible party to take any action under this paragraph. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party or the State or local government concerned will take the necessary action. This paragraph shall apply only to those sites which have been listed by the Administrator under section 3032(b) as top priority sites.

"(3)(A) Whenever there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste into the environment in any manner which, in the judgment of the Administrator, may present an unreasonable risk to public health or the environment, and whenever the Administrator is unable to determine after an onsite inspection by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may, notwithstanding section 3021 or any other requirement or authority of law, provide such assistance to State and local governments, and take such actions, as he deems necessary in his discretion to protect public health and the environment from hazards associated with such conditions.

"(B) The Administrator may exercise the authority of this section for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of law other than this part, the Administrator or such other Federal agency or instrumentality as is responsible under such other authority of law for taking such action or providing such assistance shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in or order the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite;

"(B) essential to protect the public health or safety or the environment due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Anyone ordered or authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) as of November 1, 1979, owned or operated the site,

"(2) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(3) generated, either at the site or elsewhere, any unregulated hazardous waste treated, stored, or disposed of at such site,

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be that portion of the total costs incurred by him pursuant to an order under this section which is attributable to hazardous waste generated by him or to hazardous waste which was treated, stored, or disposed at a time during which he owned or operated the site concerned.

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3042. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or safety, or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out under this part;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of uncontrolled hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions pursuant to this part, with respect to inactive hazardous waste sites shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"STATE CONTRIBUTION

"SEC. 3043. (a)(1) Not more than 90 percent of the total costs of actions taken by the Administrator under section 3041 may be paid by the United States. At least 10 percent of such total costs shall be paid by the participating State in which the inactive hazardous waste site concerned is located. No amount may be expended by the Administrator for any such action unless the State in which such hazardous waste is located has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the the hazardous waste site concerned will be funded from non-Federal sources, and

"(B) a hazardous waste disposal facility acceptable to the Administrator, will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which the Administrator has taken any action under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 percent of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $500,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's 10 percent share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts collected as fees under section 3052,

"(B) an amount equal to all amounts recovered by the United States under subpart F, "(C) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(D) any penalties assessed under this part, and

"(E) amounts authorized to be appropriated to the fund under paragraph (3).

"(2) The total amount deposited in the Fund which is derived from the fees collected under section 3052 and from appropriations under paragraph (3) shall not exceed—

"(A) $100,000,000 for the fiscal year 1981,

"(B) $150,000,000 for the fiscal year 1982,

"(C) $150,000,000 for the fiscal year 1983, and

"(D) $200,000,000 for the fiscal year 1984.

"(3) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $50,000,000,

"(B) 1982, $75,000,000,

"(C) 1983, $75,000,000, and

"(D) 1984, $100,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for emergency response, removal, containment, cleanup, and other action carried out under subpart C including administrative and personnel costs of the Administrator incident to the administration of this part and including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"FEES

"SEC. 3052. (a) IMPOSITION OF FEE.—(1) Under regulations promulgated by the Administrator, there shall be imposed on—

"(A) each supplier of petrochemical feedstocks, a fee for each pound of petrochemical feedstocks supplied to any other person or used by such supplier,

"(B) each supplier of inorganic elements and compounds, a fee for each pound of inorganic elements or compounds supplied to any other person or used by such supplier, and

"(C) the receipt by any refiner of crude oil and the export by any person of crude oil, a fee per barrel of crude oil received or exported.

Such fees shall be imposed annually and on the basis of a schedule of rates established by the Administrator at such level as he annually estimates as necessary to recover the amounts specified in subsection (b). The schedule shall be modified annually by the Administrator in accordance with this section.

"(2) The inorganic elements and compounds subject to the fee imposed under this subsection are—

"(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, mercury, the equivalent weight of barium in barium sulfide, antimony, and the equivalent weight of antimony in antimony trioxide and antimony sulfide, cobalt, nickel, the equivalent weight of tin in stannic chloride and stannous chloride;

"(B) chlorine, the equivalent weight of fluorine in hydrofluoric acid and bromime;

"(C) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid;

"(D) elemental phosphorus; and

"(E) such other inorganic elements and compounds as the Administrator may deem appropriate, based upon information available to him as a result of listing or characterizing hazardous wastes or of implementing this Act.

"(4) Any determination by the Administrator under paragraph (3)(E) to subject any other inorganic element or compound to the fee imposed under this subsection shall be based upon three or more of the following—

"(A) A finding by the Administrator that the raw material from which such element or compound is derived, including intermediates and products of such raw material, is hazardous in more than one form.

"(B) A finding by the Administrator that the generation of the raw material, intermediates, or products, from which such element or compound is derived results in hazardous waste.

"(C) A finding by the Administrator that the raw material from which the element or compound is derived is produced in large amounts.

"(D) A finding by the Administrator that the raw material from which the element or compound is derived is capable of increasing the hazard potential of other raw materials.

"(5) No fee shall be imposed under this subsection on any feedstock or element or compound with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (A) or (B) of paragraph (1). Except for a fee imposed under such subparagraph (A) on the sale or use of petrochemical feedstocks derived from any crude oil, no fee may be imposed under paragraph (1) on any crude oil with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (C) of such paragraph (1).

"(b) AMOUNT OF FEE.—(1) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of petrochemical feedstocks shall not exceed the lesser of—

"(A) 0.5 cents per pound of petrochemical feedstock supplied or used,

"(B) 2 percent of the price in the case of petrochemical feedstock when sold at arms length by the supplier, or

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $30,000,000,

"(ii) 1982, $45,000,000,

"(iii) 1983, $45,000,000, and

"(iv) 1984, $60,000,000.

"(2) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of inorganic elements or compounds shall not exceed the lesser of—

"(A) $5 per ton of inorganic elements of compounds supplied or used,

"(B) 2 percent of the price in the case of inorganic elements or compounds when sold at arms length by the supplier, or

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000.

"(3) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the receipt or export of crude oil shall not exceed the lesser of—

"(A) 3 cents per barrel of crude oil received or exported, or

"(B) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000.

"(4) In order to provide an economic incentive for the recycling and reuse of any feedstock, element, or compound referred to in subsection (a)(1) (A) or (B), the Administrator may reduce the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound in proportion to the extent that he determines any portion of that the feedstock, element, or compound to be—

"(A) removed from the waste stream of a production process and recycled in such production process, reintroduced into products, or used as a source of energy, or

"(B) derived from recycled material.

No reduction under this paragraph with respect to any feedstock, element, or compound may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound.

"(c) COLLECTION OF FEES.—(1) The time and manner of payment of the fee shall be specified, the reporting and submission of information necessary to collect the fee shall be required, and the collection of the fees shall be carried out, by such department or agency of the United States as the President shall designate in such manner as such department or agency shall, by rule, establish.

"(2) Any person required to pay any fee or comply with any other requirement imposed under regulations promulgated under subsection (a) who fails or refuses to pay such fee, together with interest thereon (at prevailing rates as determined by the Secretary of the Treasury) in accordance with regulations under this section shall, in addition to liability for any such fee, pay a civil penalty of $2,000 for each day during which such failure or refusal continues.

"(d) JUDICIAL REVIEW OF FEE REGULATIONS.—No regulation of the Administrator imposing any fee under this section, and no modification of any such regulation, may be stayed by any court pending completion of judicial proceedings for the review of such regulation or modification.

"(e) EFFECTIVE DATE.—The fees imposed under regulations pursuant to this section shall apply to—

"(1) petrochemical feedstocks and inorganic elements and compounds, supplied or used,

"(2) crude oil received or exported

on or after October 1, 1980.

"Subpart E—Prohibitions and Enforcement

"PROHIBITED RELEASES

"SEC. 3061. Any discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste at or from any inactive hazardous waste site to any land, air, or water, which presents an unreasonable risk to public health or the environment shall be unlawful unless such activity is—

"(1) permitted by the terms of the permits issued pursuant to part 1 of this subtitle,

"(2) carried out pursuant to the requirements of this part, or

"(3) otherwise authorized or permitted by Federal law.

"ENFORCEMENT

"SEC. 3062. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of section 3061 or for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against who the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty imposed under this subsection for violation of the regulations under section 3061 shall not exceed $10,000 with respect to a single violation, except that where the Administrator shows that such release was the result of willful negligence or willful misconduct within the knowledge of the person against whom such penalty is assessed, such penalty shall not exceed $250,000 with respect to a single violation. For purposes of this paragraph, each day during which a violation continues shall be treated as a separate offense.

"(C) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(b) ADDITIONAL RELIEF.—In addition to any action taken under any other provision of this section and action taken by a State or local government, when the Administrator determines there may be a substantial danger to public health or safety arising from an actual or threatened release of any hazardous waste into the environment at or from any inactive hazardous waste site, he may—

"(1) issue such order under section 3008 as may be necessary to abate such danger, or

"(2) commence a civil action to secure such relief as may be necessary to abate the threatened danger.

In any action under paragraph (2), the district court of the United States in the district in which the actual or threated release occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

"(c) CRIMINAL PENALTY.—Any person who fails to comply with the notification requirement of subsection (a) of section 3031 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Liability for Hazardous Waste Release

"LIABILITY FOR RELEASES

"SEC. 3071. (a) LIABILITY.—(1) Except for a release, or threatened release, of hazardous waste which the defendant establishes to be caused solely by—

"(A) an act of God or an act of war,

"(B) negligence on the part of the Government of the United States, or

"(C) an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste,

where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs, damages, or losses described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs, damages, and losses. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release.

"(2) If a generator or transporter of hazardous waste establishes that only a portion of the total costs, damages, and losses described in subsection (b) are attributable to hazardous waste generated or transported by him, such generator or transporter shall be liable under this subsection only for such portion. If the owner or operator of any inactive hazardous waste site establishes that only a portion of the total costs, damages, and losses described in subsection (b) are attributable to hazardous waste which was treated, stored, or disposed of in a period during which he owned or operated the site, such owner or operator shall be liable under this section only for such portion. Where more than one person is held liable under this section by any court, the court may apportion the liability among the parties in an equitable manner.

"(b) DAMAGES, COST, AND LOSSES.—The damages, costs, and losses for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste are—

"(1) the costs of any removal, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c)) and any costs incurred by a State or local government with respect to such release; and

"(2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release.

"(c) TO WHOM LIABLE.—(1) The liability for costs described in paragraph (1) of subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c), the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in subsection (b)(1), shall bring an action under this section for the recovery of such costs against the person liable promptly following his determination of the amount of any such costs.

"(2) The liability for damages or loss described in paragraph (2) of subsection (b) shall be to the person who sustained such damages or loss. In the case of any such damages or loss with respect to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability for such damages or loss shall be to the United States or to such State or local government, as the case may be.

"(d) EXCEPTION.—No person may recover under this section for damages or loss caused, in whole or in part, by such person's gross negligence or willfull misconduct.

"(e) LIABILITY UNDER OTHER AUTHORITY OF LAW.—Nothing in this section shall affect the liability of any person under any other authority of law for any release, or threatened release, of hazardous waste, except that the amount recovered by such person under any other authority of law for any damages or loss to which this section applies shall reduce the amount which such person may recover under this section for such damages or loss.

"(f) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability of any other person, including a guarantor, by reason of subrogation, indemnification agreement or otherwise, to a person held liable under this section.

"EFFECTIVE DATE

"SEC. 3072. The provisions of this subpart and subpart C shall apply to releases of hazardous waste without regard to whether or not such releases occurred before, or occur on or after, the date of the enactment of the Hazardous Waste Containment Act of 1980.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—Hazardous Waste Response Authority

"Sec. 3041. Emergency response.
"Sec. 3042. National Hazardous Waste Response Plan.
"Sec. 3043. State contribution.

"Subpart D—Hazardous Waste Response Fund

"Sec. 3051. Establishment of Fund.
"Sec. 3052. Fees.

"Subpart E—Prohibitions and Enforcement

"Sec. 3061. Prohibited releases.
"Sec. 3062. Enforcement.

"Subpart F—Liability for Hazardous Waste Release

"Sec. 3071. Liability for releases.
"Sec. 3072. Effective date.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives from State and local governments, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include—

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(4) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(5) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of the Act.

(b) There is authorized to be appropriated not more than $1,000,000 to carry out the study required under this section.

STUDY OF ADEQUACY OF FUNDING

SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, of 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of—

(1) whether the prohibitions set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or safety, or to significant environmental resources, posed by, hazardous waste re-

maining after actions taken pursuant to the amendments made by this Act;

(4) whether the fees, appropriations, and penalties established under the amendments made by this Act are sufficent and equitable; and

(5) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, fees, State participation, liability and liability limits, and financial responsibility provisions.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96-
2d Session } { 1016, PART I

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

MAY 16, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL,

and

DISSENTING VIEWS

[To accompany H.R. 7020]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive, hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

[Note: The bill, as reported, is reproduced at p.____ and therefore is omitted here.]

PURPOSE AND SUMMARY

The reported bill would amend the Solid Waste Disposal Act to provide for a national inventory of inactive hazardous waste sites and to establish a program for appropriate environmental response action to protect public health and the environment from the dangers posed by such sites. The bill would provide authorities to the Administrator of the Environmental Protection Agency to take emergency assistance and containment actions with respect to such sites and establish a $600 million, 4-year Hazardous Waste Response Fund to be drawn in equal amounts from industry-based fees and Federal appropriations, to finance such actions undertaken by the Administrator. The legislation would also establish a Federal cause of action in strict liability to enable the Administrator to pursue rapid recovery of the costs incurred for the costs of such actions undertaken by him from persons liable therefor and to induce such persons voluntarily to pursue appropriate environmental response actions with respect to inactive hazardous waste sites.

BACKGROUND AND NEED FOR THE LEGISLATION

Over the past two decades, the Congress has enacted strong environmental legislation in recognition of the danger to human health and the environment posed by a host of environmental pollutants. This field of environmental legislation has expanded to address newly discovered sources of such danger as the frontiers of medical and scientific knowledge have been broadened.

After having previously focused on air and water pollutants, the Congress, in the Resource Conservation and Recovery Act of 1976, provided a prospective cradle-to-grave regulatory regime governing the movement of hazardous waste in our society. Since enactment of that law, a major new source of environmental concern has surfaced: the tragic consequences of improperly, negligently, and recklessly hazardous waste disposal practices known as the "inactive hazardous waste site problem." The unfortunate human health and environmental consequence of these practices has received national attention amidst growing public and Congressional concern over the magnitude of the problem and the appropriate course of response that should be pursued. Existing law is clearly inadequate to deal with this massive problem.

During the 95th and 96th Congresses, the Committee on Interstate and Foreign Commerce, through both its Oversight and Investigations and Transportation and Commerce Subcommittees, has investigated and documented the scope of the problem and considered possible solutions to it.

The United States Environmental Protection Agency has conducted a study to determine the number of inactive and uncontrolled hazardous waste sites in existence. In 1979 the EPA estimated that as many as 30,000 to 50,000 sites existed, of which between 1,200–2,000 present a serious risk to public health. Irrespective of which available or projected statistics are relied upon, the need for a strong legislative response is evident.

The following findings of the Committee's Oversight Subcommittee clearly and unequivocally document the nature and magnitude of the problem and the inadequacy of existing law to properly control it. The list is merely illustrative and by no means exhaustive.

1. FINDINGS CONCERNING DISPOSAL OF HAZARDOUS WASTE

(a) Common characteristics of dump sites

The Subcommittee investigation of over one dozen hazardous waste disposal problems revealed four characteristics that were common to most of the sites:

(1) The sites contain large quantities of hazardous waste:

Hooker Chemical's three disposal sites in the Niagara Falls, New York, area contain an estimated 352 million pounds of industrial chemical waste, including TCP (which is often contaminated with one of the most toxic substances known to man, dioxin) and lindane, a highly toxic pesticide product.

Occidental Chemical Company's site at Lathrop, California, discharged thousands of gallons of pesticide formulation wastes into the ground on the company site.

Hooker dumped millions of pounds of hazardous wastes in the local municipal dumps of Long Island, New York.

The Valley of the Drums in Shepardsville, Kentucky, contains over 17,000 barrels of hazardous wastes.

The Chemical Control site in Elizabeth, New Jersey, contained over 40,000 barrels of hazardous wastes. At least 100 pounds of picric acid, a powerful explosive, also was found stored on the site.

(2) Unsafe design and disposal methods are widespread:

At the S-Area site in Niagara Falls, drums of liquid hazardous wastes were rolled into trenches and tank wagons were discharged directly into pits at a site composed of reclaimed land. Samples of sediment from a water treatment plant only a few hundred feet from the site suggest that chemicals from the dump site have entered the water supply.

A similar disposal method at the Hardeman County, Tennessee site resulted in the contamination of well water.

At the Valley of the Drums, thousands of barrels were stacked illegally in the hauler's backyard. These drums are in a seriously deteriorating state, and some have already burst and spilled their contents on the ground.

At Hooker's Montague, Michigan site, barrels of hazardous waste were often dumped off the backs of trucks and hacked open by men armed with axes. The nature of the area affords no geological protection against the wastes reaching local groundwater.

At the Elizabeth, New Jersey site, tens of thousands of barrels of highly toxic, explosive and flammable materials are unsafety "stored" within a few feet of the Company's waste incinerator, within a few feet of a local road and a railroad right of way and within one quarter mile of huge liquefied natural gas and propane storage tanks.

At Lathrop, California, pesticide formulation waste products placed in lagoons were allowed to percolate into the extremely permeable soil, threatening the area's drinking and irrigation water.

In Denver, Colorado, radioactive waste products from old radium industry operations have been discovered throughout the Denver area.

In Central Florida, hundreds of homes were built on land covered with waste containing radium and thorium from old phosphate operations; unhealthy levels of radon gas have been found in hundreds of homes.

At the Love Canal, the safety of clay-lined landfills for disposal of highly toxic organic waste has been questioned.

Waste oil contaminated with toxic chemicals was laid on 9 roads in East Texas due to the negligence of the waste disposal company.

(3) The danger to the environment is substantial:

Contaminated groundwater has rendered unusable the local water supplies of Montague, Michigan; Lathrop, California; parts of two counties on Long Island, including the towns of Bethpage and Glenn Cove; and around the dump site in Hardeman County, Tennessee.

Leachate from the S-area dump threatens the principal water supply of the City of Niagara Falls.

Two hundred thirty families have been evacuated from the Love Canal and the property values of the entire neighborhood have been rendered negligible.

(4) Many sites pose major health hazards:

The Love Canal health data shows elevated miscarriage and birth defect rates; evidence suggests many other health effects, the nature and extent of which are in dispute.

Excessive radiation levels in Denver, Colorado, and Central Florida pose serious risks of latent cancers and genetic damage. For example, EPA has estimated that the Florida area residents' risk of contracting lung cancer is 35 percent above average.

The State of New Jersey has estimated that a fire or explosion at the Chemical Control site could produce a toxic cloud of chemcials that could threaten hundreds of thousands of people in the New York metropolitan area.

(b) Inadequate State and local response to threats to the public health from hazardous waste disposal:

The Board of Education of Niagara Falls permitted a public school to be build on top of the Love Canal site and local officials permitted a residential sudivision to be built adjacent to the site.

The New York State Health Department has failed to assure residents of the Love Canal that the public health is being adequately protected.

The Orange District Office of the Texas Department of Water Resources did not perform an adequate investigation of contaminated road oil dumped in East Texas and, therefore, failed to discover a potential public health problem until after any damage was already done.

(c) The failure to properly dispose of hazardous waste is costing the public millions and the cost of cleanup is far more expensive than proper disposal in the first place:

An EPA report estimates that it will cost between $13.1 and $22.1 billion to clean up all hazardous waste that pose a danger to public health and the environment.

Cleanup cost at the Love Canal have already exceeded $27 million and area residents are seeking more than $2 billion for personal injury and property damage. It is estimated that a properly secured disposal site would have cost only $4 million (in 1979 dollars) in 1952 when the site was closed.

The State of Michigan has estimated the cost of cleaning up the Montague site at $100 million.

The State of New Jersey has estimated the cost of cleaning up Chemical Control at $10 million.

EPA estimates it will cost up to $2.9 million for remedial work to eliminate the danger of phosphate slag in Florida.

The Colorado Health Department says that cleaning up the radium in Denver could cost up to $25 million.

Should the containment efforts at the S-area in Niagara Falls and on Long Island fail, the cost of building alternative water supply systems would be astronomical.

(d) Special problems with certain kinds of dump sites:

Abandoned sites—those where no owner can be found or when the owner cannot afford the cost of clean up—have forced State and local governments to bear the costs.

On-site facilities—those owned and operated by the generators of the waste, either on the plant site or elsewhere—pose serious problems because State regulation of them historically has been minimal. The Subcommittee's survey of the 53 largest domestic chemical manufacturers revealed that 94% of their wastes have been disposed of on the plant site.

(e) Locating future sites will be difficult:

The Nation is facing a critical storage of safe disposal sites for hazardous wastes which will be exacerbated as hazardous waste production increases.

(1) The State of New Jersey testified that it is having difficulty finding a home for the more than 40,000 barrels of chemicals at the Chemical Control site.

(2) The State of Kentucky has not yet located a safe home for the 17,000 partially buried drums at the Valley of the Drums.

(3) The Colorado Department of Health is having difficulty finding a disposal site for the 70,000 cubic feet of radium-contaminated soil in Denver.

Public opposition to new sites, caused by improper disposal in the past, is growing. Until such opposition can be lessened by demonstrating that hazardous wastes can be disposed of safely, future sites may have to be located on Federal and State lands.

2. STATUTORY BASIS FOR CONTROL OF DISPOSAL OF HAZARDOUS WASTE

(a) Subtitle C of the Resource Conservation and Recovery Act requires EPA to devise standards for state management of hazardous waste disposal. EPA is required to promulgate regulations to—

(1) identify and list the characteristics of hazardous waste;

(2) require generators (producers) of hazardous waste to keep records on their wastes, lable containers, and initiate a manifest to supply others in the waste disposal chain with information on the composition of the waste and to trace the movement of that waste from the generator to the final disposal site;

(3) set standards for transporters of waste;

(4) set standards for owners and operators of hazardous waste treatment, storage, and disposal facilities; and

(5) set standards for issuing permits to all such facilities.

In addition the Act authorizes EPA to bring suit to force the clean up of a hazardous waste problem if the generation, transportation, storage, disposal or treatment of the waste presents an imminent hazard to health or the environment. Finally, the Act provides both civil and criminal penalties for violations.

(b) EPA's slow enforcement of the hazardous water provisions of the Resource Conservation and Recovery Act has frustrated effective action.

(1) Despite EPA's own estimates that 77.1 billion pounds of hazardous waste are produced each year but only 10 percent are disposed of in an environmentally sound manner, EPA has failed to conduct a comprehensive inventory of the location and content of all places where hazardous waste has been disposed;

(2) Although the Congressional deadline of 18 months for EPA promulgation of regulations may have been unduly short, there is no excuse for not having the regulations promulgated by now, three years later. This delay apparently stems from EPA's failure to recognize the importance of the problem and request the necessary staff and resources to meet the deadlines. EPA requested far less than the authorized ceilings for fiscal 1978 and 1979 and then, after the Congress appropriated more than they requested, EPA failed to spend what the Congress has appropriated;

(3) EPA has proposed inadequate regulations:

The proposed regulations do not require testing for four of the eight characteristics of hazardous waste; use a procedure for testing for toxicity that does not adequately simulate real world conditions; and fail to list as hazardous a number of known carcinogens;

The proposed regulations wrongfully exempt some generators of highly dangerous hazardous wastes simply because the quantity of wastes disposed is not large and do not adequately regulate the use of recycled wastes;

The proposed regulations for owners and operators of hazardous waste treatment, storage, and disposal facilities are not flexible enough to permit the continued use of important small, single waste or special purpose facilities; would allow migration of wastes from sites and stop the monitoring of them long before the end of the wastes' toxicity; and require insufficient comprehensive monitoring for leachate and groundwater contamination; and

The proposed regulations would permit the granting of interim permits to sites that are far below the minimum safety level; and

(4) EPA's failure to promulgate regulations in a timely fashion is delaying State programs, as States are reluctant to act for fear that they will have to act a second time later to comply with as yet unknown Federal standards. The resulting State inaction perpetuates the weakess link problem as waste is disposed of in the States with the least restrictive laws.

(c) Deficiencies in RCRA have left important regulatory gaps.

(1) The Act is prospective and applies to past sites only to the extent that they are posing an imminent hazard. Even there, the Act is of no help if a financially responsible owner of the site cannot be located.

(2) RCRA does not authorize EPA and the Department of Justice to subpoena documents or persons suspected of illegal or inadequate hazardous waste disposal practices.

(3) RCRA does not require people to reveal the existence and monitor possible pollution from inactive waste disposal sites.

(4) RCRA provides inadequate funds for State hazardous waste programs. If RCRA's objective of State management of hazardous waste disposal is to become a reality, a sure source of funds must be provided to cover the cost of that regulation.

It is the intent of the Committee in this legislation to initiate and establish a comprehensive response and financing mechanism to abate and control the vast problems associated with abandoned and inactive hazardous waste disposal sites.

COMMITTEE CONSIDERATION

The Committee's Subcommittee on Transportation and Commerce held four days of hearings on H.R. 4571, and the related bills H.R. 4566 and H.R. 5290, on June 19, August 17, October 10, and October 11, 1979. Testimony was received from 28 witnesses, representing 13 organizations, with additional material submitted by 11 individuals and organizations.

On December 13, 1979, the Committee met in open markup session to consider H.R. 5790, a bill introduced by Congressman Florio, and a staff draft.

Subsequently, the subcommittee met on April 30 in open markup session to consider H.R. 7020, introduced by Congressman Florio, and reported the bill to full Committee on Interstate and Foreign Commerce without amendment by a 5-3 recorded vote. The full Committee met in open markup session on May 13, 1980 and by a recorded vote of 21-3 ordered reported an amendment in the nature of a substitute, as amended to H.R. 7020 to the full House of Representatives.

OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as set forth in the report of its subcommittee on oversight and investigation on Hazardous Waste Disposal issued in September 1979.

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the inflationary impact of this legislation will be minimal and submits the following information supplied by the Congressional Budget Office.

H.R. 7020 establishes a Hazardous Waste Response Fund to be funded by a system of fees and appropriations. The total amount derived from fees and appropriations is not to exceed $100 million in fiscal year 1981, $150 million each in fiscal year 1982 and fiscal year 1983, and $200 million in fiscal year 1984. H.R. 7020 authorizes appropriations of half of these levels for each year and specifies that a fee system be developed to bring the Fund up to the levels specified above.

The fees will have a direct although small impact on the overall price level. The appropriation would affect prices only indirectly and possibily not at all if it does not lead to an increase in the deficit or occurs during a period of less than full employment. Therefore this estimate is confined to an analysis of the effect of the fee system.

The methodology used to estimate the impact of the fee is to compute the direct impact by dividing the level of the fees by the projected level of the gross domestic business product. The gross domestic business product is GNP minus the government sector and represents about 85 percent of GNP.

Although the impacts on the prices of items subject to the fee are not insignificant, CBO estimates that the impact on the general price level will be quite small. The direct impacts can be calculated to be as follows: fiscal year 1981, .002 percent; fiscal year 1982, .003 percent; fiscal year 1983, .003 percent; and fiscal year 1984, .003 percent. These direct impacts may be augmented by as much as 50 percent due to the wage-price feedback process that results as higher prices put upward pressure on the wage level. The analysis assumes complete passthrough of the fees to prices. The impacts may be adjusted on a roughly proportional basis if some other passthrough assumption is employed.

The details of the estimate are developed in the table below:

Fiscal year	Section 3052 fee (millions)	Projected gross national business production [1] (billions)	Direct price level impact (percent)
1981	$50	$2,375	0.002
1982	75	2,668	.003
1983	75	3,011	.003
1984	100	3,386	.003

[1] 85 percent of March 1980 CBO projections for GNP.

COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation:

The reported bill authorizes an appropriation not to exceed $600,000,000 over four years to carry out the provisions of the Solid Waste Disposal Act as amended. This amount requests the committee's estimate of funds necessary to carry out the provisions of this Act.

In accordance with the clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee includes the following cost estimate submitted by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Spending authorizations authorization level	71	75	75	100	
Estimated budget authority	50	75	75	100	
Total budget authority/authorization level	121	150	150	200	
Estimated outlays	20	69	110	142	170
Estimated revenues	50	75	75	100	
Net budget impact [1]	30	6	−35	−42	−170

[1] Revenues less costs (increase to surplus or decrease to deficit).

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of this estimate it was assumed that all funds authorized are appropriated prior to the start of each fiscal year. In addition it was assumed that the fee schedules would generate the necessary revenue specified in the bill and that all monies available to the fund would be obligated in the year they became available. The assets of the fund and other authorizations specified in the bill are assumed to spend at rates similar to comparable programs within the Environmental Protection Agency and the Department of Transportation.

Estimate comparison: None.

Previous CBO estimate: None.

Estimate prepared by: Linwood Lloyd.

Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Section 1 of the reported bill states that the short title of the Act is the "Hazardous Waste Containment Act of 1980."

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

Section 2 states that nothing in the Act shall apply to oil or other pollution of navigable waters.

FINDINGS

Section 3 sets forth the Congressional findings that improper hazardous waste disposal has occurred throughout the country; the location of many hazardous waste sites is unknown; the cooperation of governments and industry can assist in compiling an up-to-date inventory of hazardous waste sites; hazardous waste releases releases can cause harm to public health, safety, and the environment; dangerous hazardous waste releases can be contained with modern technology; and a systematic funding mechanism is necessary to protect public health and the environment for dangerous releases in a cost-effective manner.

GOALS

Section 4 of the bill sets forth the goals of the bill which include: an inventory of inactive hazardous waste sites in a systematic manner, establishment of priorities among the sites based on relative danger, a response program to contain dangerous releases from inactive hazardous waste sites, acceleration of the elimination of unsafe hazardous waste sites, and a systematic program of funding to identify, evaluate and take responsive actions at inactive hazardous waste sites to assure protection of public health and the environment in a cost-effective manner.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

Section 5 amends Subtitle C of the Act by establishing a Part II of the existing subtitle to be known as the "Hazardous Waste Response Program," with three Subparts.

PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

Subpart A—General Provisions

COVERAGE OF PART

Section 3021 limits the coverage under this part to inactive hazardous waste sites and specifically excludes oil or other pollution of navigable waters.

DEFINITIONS

Section 3022 sets forth definitions of a number of terms used in new Part 2 of Subtitle C of RCRA.

Subpart B—Inventory, Priorities, and Monitoring

HAZARDOUS WASTE SITE INVENTORY

Section 3031 requires each owner or operator of an inactive hazardous waste site, as of the date of enactment, to supply appropriate relevant State and local officials (or the Administrator of EPA under subsection (c)) information relating to the presence of such site, including its location, the nature of hazardous waste present at the site, and the types of waste treatment, storage, or disposal techniques which have been used there. Owners or operators have six months to notify. The States are provided authority to secure this information from owners or operators or others associated with the waste.

States are required to compile and update an inventory of inactive sites and submit it to the Administrator. If States fail to conduct an inventory, EPA is required to do so. $35,000,000 are authorized for the States for their inventories. The Administrator shall reimburse States which have already conducted an inventory. EPA must then compile a national inventory and report the results to Congress.

The Committee intends that the notification provisions of subsection (a) of this section will serve as a baseline of information for the States. Consequently, the States need only collect additional information to fill in gaps left as a result of the notification process.

Subsection (c) is intended to ensure that State inventory programs provide the information which the Administrator deems necessary to identify and evaluate inactive sites. Where the Administrator believes a State program to be inadequate, he will so notify the State and allow such State ninety days to revise its program. Unless the Administrator determines that the program, as revised, will adequately provide the necessary information, the Administrator is required to assume the State authorities of subsection (b) and may use the funds available under subsection (e) to carry out those responsibilities. In addition, such State will not be eligible for further grants until the Administrator determines that the State program has been upgraded sufficiently to meet the requirements of this section. The Committee anticipates a cooperative effort in this respect and that reliance on subsection (c) will be pursued by the Administrator only as a matter of last resort.

While recognizing that the inventory provisions of this section are limited to inactive sites, the Committee intends that the Administrator shall submit a report under subsection (d) containing an inventory of all active and inactive sites. Since the Administrator will have access to active site information under the notification provisions of section 3010 of RCRA, he should compile, to the extent practicable, an integrated inventory of all hazardous waste sites.

ESTABLISHMENT OF PRIORITIES

Section 3032 requires that within 15 months of enactment States must establish priorities among inactive sites in their State based upon EPA guidelines. State priority lists must be updated annually. The Administrator is required to establish a national priority list. The first list must be published six months after enactment. Thereafter the Administrator is required to update the national list annually based upon State priorities. The top 100 sites on the national list shall be designated "top priority sites."

In requiring the Administrator to submit the first national priority list nine months before the States are required to produce their first priority lists, the Committee intends that the Administrator will develop the first national priority list based upon the best information available as of the date of enactment, without information from the States. In updating the national priority list in subsequent years, State priority lists will be available and shall be utilized in revising national priorities.

MONITORING OF INACTIVE SITES

Section 3033 establishes monitoring requirements at inactive sites. Owners, including Federal agencies, of inactive sites which pose a reasonable likelihood of harm to public health or the environment are required to monitor the extent to which hazardous waste is released into the environment, submit periodic monitoring reports, and notify EPA and appropriate State and local officials of dangerous releases immediately. If the current owner is unable to monitor a site, any person who owned or operated the site at the time during which a substantial portion of the hazardous waste was placed at the site may be ordered to assume monitoring responsibilities.

IMMUNITY

Section 3034 provides that no information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

DESTRUCTION OF RECORDS

Section 3035 provides that no person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

Subpart C—Hazardous Waste Response Authority

EMERGENCY RESPONSE

Section 3041 provides the basic environmental response authority of the Administrator. Subsection (a)(1) of section 3041 authorizes the Administrator to take emergency actions to protect public health or the environment whenever he receives evidence that the release of hazardous waste from an inactive site presents or may present an imminent and substantial danger to public health or the environment, or that there is a substantial threat of such a release. The Committee recognizes that emergency action will often be required prior to the receipt of evidence which conclusively establishes an emergency. Because delay will often exacerbate an already serious situation, the bill authorizes the Administrator to take action when an imminent and substantial endangerment *may* exist. The Committee intends this standard to be a flexible one. However, the Administrator may not act where the party responsible for the release or threatened release, or the affected State, will take proper response action.

Subsection (a)(2) gives the Administrator authority to address longer term public health and environment threats from inactive hazardous waste sites. In assessing the appropriate action under this provision, the Administrator must give consideration to such factors as a site's potential for causing chronic adverse health effects. A finding that an "unreasonable risk" may exist does not require an exhaustive cost/benefit analysis that the term triggers elsewhere in environmental law.

Provision is made for public comment and consultation to involve interested parties in the decision-making process to the maximum extent possible. This requirement is not intended to unduly delay action necessary to protect public health or the environment. Formal hearings are not required.

The Adminstrator is authorized to relocate, contain, clean up, and take other remedial action with respect to hazardous waste at an inactive site whenever he determines that the site presents or may present an unreasonable risk to public health or the environment. Alternatively, the Administrator may be order require a responsible party to take such remedial action. Prior to issuing an order, however, the Administrator must confer with the responsible party as to the reasonableness of the order, which should clearly set forth reviewable standards governing its issuance. Judicial review of such an order would not preclude the Administrator from taking appropriate action. As in the case of emergency actions, the Administrator may not act where he determines that the responsible party will take the proper action. The authority of the Administrator to act under this provision is limited to actions at the 100 "top priority sites" listed in the national inventory.

There may be clear cases of "immiment and substantial endangerment to public health or the environment" where there are conditions similar to but not immediately identifiable as a hazardous waste release. The Committee intends that under subsection (a)(3) the Administrator have limited authority to respond in such instances to abate the threat without having conclusive evidence as to the source of the problem. The authority under such subsection expires on the earlier of three months or at such time as the Administrator determines that response is authorized under another authority of law.

In order to carry out the provisions of this section, the Administrator, under subsection (a)(5), is authorized to provide equipment and other items necessary to establish and maintain damage assessment and response capability of Federal, State, and local strike forces or other emergency response teams established under the Response Plan of section 3042.

Where States or local governments have the capability to carry out the actions authorized by this subsection as determined by the Administrator, and where such governments agree to carry out these actions, the Administrator must enter into cooperative agreements or contracts with States or local governments to take the actions.

Subsection (a)(6) is intended to insure that remedial actions required at any size for which a department, agency, or instrumentality of the Federal government has responsibility are financed through the responsible institution's budget, rather than through the Fund. If the responsible party does not have the expertise or facilities to undertake the necessary actions, it may contract with EPA or with outside parties.

Subsection (b) defines the term "responsible party" to mean any person who (1) owned or operated in inactive site at the time it was used for treatment, storage or disposal of hazardous waste or (2) generated or disposed of a substantial portion of the hazardous waste treated, stored, or disposed of at an inactive site.

Subsection (c) provides for apportionment of costs among responsible parties. In cases where there are two or more parties responsible for a release at an inactive site, if one of the parties is ordered to take actions which result in his expenditure of more than that which he establishes to be his proportionate share, he may recover the excess amount from the fund.

The Committee expresses two intentions in providing for apportionment of costs among responsible parties in subsection 3041(c). First, responsible parties who respond to a cleanup order should not be penalized by having to expend more funds to comply with an order than such parties would ultimately be liable for. Second, this apportionment provision should act as an incentive for compliance with cleanup orders by offering prompt reimbursement from the Fund.

Subsection (d) provides guidance to the Administrator in selecting appropriate response actions from among available alternative options. The appropriate actions must be as nearly in accordance with the National Hazardous Waste Response Plan as possible. In addition, action at a given site must be that cost-effective response which provides a balance between the need for protection of public health or the environment at the site under consideration and the availability of funds to respond to the other sites which present or may present a threat to public health or the environment. In making this determination for emergency situations, the Administrator is directed to take into consideration the need for immediate action.

In order to ensure that the funds made available under this legislation achieve the maximum cleanup and containment activity, the Administrator must carefully fashion an appropriate response under subsection (d). This may necessitate the selection of responses that do not achieve total cleanup and containment. However, the Committee specifically recognizes that expenditures to prevent a threatened release may well result in a considerable savings in comparison to efforts to clean up or contain a release once it has occurred. In some cases, the Administrator may choose to address a threatened release which does not pose as immediate a threat of exposure to public health or the environment if the consequences of the potential exposure may cause a larger expenditure of funds to achieve cleanup or where the consequences of such exposure may have a severe impact on public health or the environment. The Committee recognizes the need to consider the requirement for immediate action in emergency situations in making the determination of appropriate response. Emergency actions should not be delayed by having to make a cost-balancing determination.

The Committee recognizes that many sites which will receive interim status under section 3005(e) of RCRA have been designed and operated in no better fashion than the inactive sites which are causing problem releases. Accordingly, the reported bill provides in subsection (e) of section 3041 for response authority for releases of hazardous waste from interim status sites. The same response standards for inactive sites are applicable to interim status sites. The subsection instructs the Administrator to recover costs expended under that subsection for response actions at interim sites and makes the liability provisions of section 3071 applicable to interim sites for such recovery.

NATIONAL HAZARDOUS WASTE RESPONSE PLAN

Section 3042 directs the President to prepare a response plan analogous to the National Contingency Plan under the Clean Water Act. The purpose of the plan is to give some consistency and cohesiveness to response planning and actions. The plan would include among other items:

(1) appropriate roles and responsibilities for Federal, State, and local authorities;

(2) methods for discovering and investigating hazardous sites;

(3) methods for evaluating and containing releases; and

(4) criteria and methods for determining the appropriate extent of removal, containment and response.

After publication of the plan, response shall be in accordance with the plan to the greatest extent possible.

Since the Administrator may respond to inactive as well as interim status sites under section 3041, the Committee intends that interim status sites be taken into account in an appropriate fashion in the development of the plan.

The Committee does not intend development of the plan to be a prerequisite to the Administrator taking actions under section 3041. The Administrator may utilize the authority of that section prior to the completion of the plan. Once the plan has been developed, the Administrator is required to conform response actions to the plan to the maximum extent practicable.

STATE CONTRIBUTION

Section 3043 provides that States must pay 10 percent of all response costs incurred above $500,000. States must pay all costs of long-term maintenance as defined by regulations promulgated by the Administrator. For any expenditures beyond $500,000, the State must assure the provision of an acceptable hazardous waste disposal facility if it is necessary to remove waste from the site.

During the first 18 months after enactment, the Administrator may pay any or all of the State share at any inactive site if the State agrees to reimburse the Administrator.

In defining "long-term maintenance" the Committee intends the Administrator to consider that long-term maintenance may be far different for a clay cover to a landfill than for a groundwater counter-pumping system to achieve containment by reversing groundwater flow in a contaminated aquifer surrounding a leaking surface impoundment. The administrator is directed to take these factors into account in developing regulations to define long-term maintenance.

The Committee notes that a State's requirement to find a suitable site for wastes which must be removed from an inactive site under subsection 3043(a)(1)(B) does not require the site to be within the borders of that State.

Paragraph (a)(4) will avoid penalizing those States that already have taken action to clean up inactive waste sites, and will provide an incentive for continuation of these programs. This provision also will act as an incentive to other States to begin taking necessary remedial actions even before legislation is finally enacted.

A credit is allowed for expenses or obligations incurred after January 1, 1978, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. This section allows States a credit for those remedial actions taken before enactment, which are allowable costs under the Act.

Funds obligated or expended which may be eligible for this credit must be amenable to verification by EPA prior to granting of the credit.

Subpart D—Hazardous Waste Response Fund

ESTABLSIHMENT OF FUND

Subsection (a) of section 3051 establishes a Hazardous Waste Response Fund in the United States Treasury.

Subsection (b) enumerates the sources of the Fund. These include: fees collected under section 3052, monies recovered under the liability provisions, reimbursements from subsection 3041(a)(3), penalties collected under this Act, and funds authorized to be appropriated. The total amount deposited in the Fund from industry-based fees and appropriations over the 4-year authorization is established at $600 million, to be provided in equal amounts from fees and appropriations.

Subsection (c) sets forth allowable expenditures from the Fund. Amounts credited to the Fund in any fiscal year and not appropriated as provided for in a given fiscal year are to remain available for expenditure in subsequent fiscal years. The Committee anticipates that total amounts in the Fund at any given time may exceed those dollar limits due to amounts also deposited in the Fund from recovered monies, penalties, etc.

Monies from the Fund may only be spent for emergency response, removal, containment, cleanup, and other actions necessary to carry out the Hazardous Waste Response Authority of Subpart C Funds may not be used to respond to federally owned or operated sites. The Committee intends that federally owned or operated sites be cleaned up using funds from the budgets of the agencies which own or operate the site needing response.

FEES

Section 3052 is the basic provision establishing the fee system which accounts for a maximum of $300 million over a 4-year period. The Administrator is directed to develop regulations for imposing a fee on suppliers of petrochemical feedstocks, certain listed inorganic elements and compounds, and crude oil. The amount of the fee for each of the three categories is limited. For petrochemical feedstocks and inorganic elements and compounds the limits are the lesser of fixed per-weight limits; 2 percent of the selling price of the feedstock, element, or compound; specific dollar limits; or fixed percentages of amounts appropriated under subsection 3051(b)(3). For crude oil, the limit is the lesser of three cents per barrel, specified dollar limits, or a fixed percentage of amounts appropriated under subsection 3051(b)(3).

Fees may be reduced on petrochemical feedstocks or inorganic elements or compounds which are reused, recycled, or used as a source of energy as an incentive to promote reuse and recycling. Persons failing or refusing to pay the fee will be subject to a civil penalty. The Administrator, in consultation with the Treasury Department, other agencies and departments, and representatives of affected industries, is directed to develop and submit to Congress a report on a hazardous waste disposal or generation fee system which incorporates a degree of hazard assessment into the fee system. The Committee believes that this type of fee will more accurately and equitably internalize the costs of the risks posed to society by hazardous wastes. $2,000,000 are authorized to develop the report which must be submitted within two years of enactment.

By placing limits on the amount of fees collected on categories of materials subject to the fee relating to fixed percentages of funds appropriated under subsection 3051(b)(3), the amount of fee generated is linked to the amount of funds appropriated. In this manner, the total amounts generated by fees in any given year will equal the amounts of funds appropriated from general revenues. The Committee intends that this linkage will serve as an incentive for full Federal commitment of funds under subsection 3051(b)(3), because each dollar appropriated under that paragraph will be matched with a dollar generated by fees. The Committee believes that appropriations equal to the full authorization limits will be necessary to produce adequate funds to remedy existing inactive site threats to public health and the environment.

In providing temporary exemption for the fee system for the fertilizer production industry, the Committee intends that chemicals associated with the production of fertilizers will be exempt from the imposition of fees. However, the non-fertilizer production usage of such chemicals will not be so exempt fees. However, the non-fertilizer production usage of such chemicals will not be so exempt.

There is some possible lack of clarity in the use of the term "fertilizer production industry" in connection with the exemption provided. The Committee intends that the term "fertilizer production industry" shall be read so as to include those activities and products as are described and set forth in the Standard Industrial Classification Manual (OMB, 1972 Edition) and identified therein as SIC Code No.: 1474, 1475, 2873, 2873112, 2874, 2874185, 28193, 2810922, and 2819331

Subpart E—Enforcement

Section 3061 provides that the Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part. The amount of the penalty shall be based on consideration of the size of the business of such owner or operator, the effect of a penalty on his ability to continue in business, the standard of care exercised by such person, and efforts made by him to mitigate the situation.

With regard to a penalty for failure of a responsible party to comply with any order under section 3041, the penalty shall not exceed two and one half times the amount of the costs of actions attributable to him taken by the Administrator or by a State or local government, or both under section 3041. However, no civil penalty for failure to obey a section 3041 order may be imposed against any person unless such person is held liable for costs under section 3071. Any such penalty shall be in addition to any costs recovered from that person under section 3071.

Any person who fails to comply with the notification requirements or who knowingly destroys records is subject upon conviction to a criminal penalty.

Subpart F—Liability for Hazardous Waste Releases

LIABILITY FOR RELEASES

Section 3071 would establish a Federal cause of action for liability for the costs of emergency assistance, removal, and containment action undertaken pursuant to section 3041. The purpose of section 3071 is to provide a mechanism for prompt recovery of monies expended for the costs of such action from the Hazardous Waste Response Fund established under section 3051 from persons responsible therefor and to induce such potentially liable persons to pursue appropriate environmental response actions voluntarily.

Under subsection (a) of section 3071, any person who caused or contributed to a release or threatened release of hazardous waste into the environment which results in costs being incurred under the authority of section 3041 would be strictly, jointly and severally liable for such costs. The subsection also provides defenses to and limitations of such liability.

The Committee intends that the usual common law principles of causation, including those of proximate causation, should govern the determination of whether a defendant "caused or contributed" to a release or threatened release. Whether a person caused or contributed to a release is a factual inquiry to be determined with reference to the particular circumstances of the case. Thus, for instance, the mere act of generation or transportation of hazardous waste, or the mere existence of a generator's or transporter's waste in a site with respect to which cleanup costs are incurred would not, in and of itself, result in liability under section 3071. The Committee intends that for liability to attach under this section, the plaintiff must demonstrate a causal or contributory nexus between the acts of the defendant and the conditions which necessitated response action under section 3041.

Paragraph (1) of subsection (a) Section 3071 would establish certain defenses to liability. Specifically, if a defendant establishes that a release or threatened release of hazardous waste was caused solely by an act of God or an act of war, negligence on the part of the United States, an act or omission of a third party or any combination of the foregoing, he shall not be held liable under this section. The act of God defense is intended to mean those natural disasters or natural phenonemon of an exceptional or unanticipated character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. In order to successfully interpose a listed defense, the defendant must demonstrate causation in accordance with the principles described above.

With respect to the third party defense, a defendant is also required to establish that he exercise due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such waste. The defendant must show that he exercised due care with respect to all reasonably foreseeable acts or omissions of a third party. For instance, in the case of a defendant generator, shipper, transporter, or disposer, the defendant must demonstrate that he exercised due care in the selection and instruction of a responsible contractor or other independent party engaged by such defendant or the transportation, storage, treatment, or disposal of the waste, provided adequate information as to the identity, quantity, composition, condition and characteristics of the waste to such person, and took reasonable measures to assure or verify that such person properly carried out the activities for which he was engaged. Such defendant must also demonstrate that he properly labeled, loaded, and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste. In general, the Committee intends that for a defendant to establish that he exercised due care, the defendant must demonstrate that he took all precautions with respect to the particular waste that a similarly situated reasonable and prudent person would have taken in light of all relevant facts and circumstances.

Paragraph (2) of subsection (a) provides for a limitation and several liability which may be imposed under paragraph (1).. Where a defendant establishes that only a portion of the total costs incurred pursuant to section 3041 are attributable to hazardous waste generated or transported by him or which was treated, stored, or disposed of when he owned or operated the hazardous waste site in question, such defendant's liability shall be limited to the amount of those costs. The legislation places the burden of proof on the defendant to make such a showing by a preponderance of the evidence. The defendant may meet such burden by establishing that only a portion of such costs may be reasonably attributable to him in light of his activities with respect to hazardous wastes. Where the defendant meets such burden, he will be required to pay only the amount of such costs, and the remainder of total costs incurred by the Fund or paid by other liable parties.

Subparagraph (B) provides that to the extent that one or more defendants do not establish apportionment by a proponderance of the evidence under subparagraph (A), the court shall use its inherent equitable powers to apportion liability, to the maximum extent practicable, among the defendants based upon evidence presented by them as to their contribution. The apportionment under this subparagraph shall be made among the remaining liable parties. Regardless of what proportion of the remaining costs the court assigns to each defendant, all such remaining costs shall be apportioned among the remaining defendants.

It is the intent of the Committee in establishing the apportionment scheme set forth in paragraph (2) of subsection (a) to induce persons to come forward with as much information as possible with respect to hazardous waste.

STUDY OF HAZARDOUS WASTE SITING

Section 6 directs the Administrator, in consultation with other Federal agencies and representatives from State and local governments to prepare a study assessing the issues, alternatives, and policy considerations involved in selecting locations for hazardous waste treatment, storage, and disposal facilities. Also, the study calls for recommendations on the appropriate balance between private and public hazardous waste facilities; and, to aid in developing these recommendations, the Administrator is required to solicit and evaluate proposals from private firms to construct and operate these facilities in a manner consistent with existing law and at no cost to the Federal government. Private enterprise should be encouraged to develop innovative methods to clean up hazardous wastes. The Committee believes that primary responsibility for hazardous waste management belongs in the private sector. The public sector should only be involved if and when the private sector needs or seeks assistance.

The Administrator shall report the findings to Congress within one year after the date of enactment. There are $1 million authorized for carrying out this study.

STUDY OF ADEQUACY OF FUNDING

Section 7 requires the Administrator to submit a report to Congress within six months after the end of each fiscal year summarizing the receipts and disbursements during that year from the Fund as established in this Act.

No later than January 12, 1984, the Administrator shall submit to Congress a comprehensive report on the implementation of this Act. This report should include an analysis of whether the requirements under this Act are effective; the extent to which the Fund enables the Government to respond adequately; the costs associated with the response actions under the Act; and the effectiveness of State participation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this table referred to as "this Act"), together with the following table of contents, may be cited as the "Solid Waste Disposal Act":

Subtitle A—General Provisions

* * * * * * *

Subtitle C—Hazardous Waste Management

PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT

Sec. 3001. Identification and listing of hazardous waste.
Sec. 3002. Standards applicable to generators of hazardous waste.
Sec. 3003. Standards applicable to transporters of hazardous waste.
Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
Sec. 3006. Authorized State hazardous waste programs.
Sec. 3007. Inspections.
Sec. 3008. Federal enforcement.
Sec. 3009. Retention of State authority.
Sec. 3010. Effective date.
Sec. 3011. Authorization of assistance of States.

PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

Subpart A—General Provisions

Sec. 3021. Coverage of part.
Sec. 3022. Definitions.

Subpart B—Inventory, Priorities, and Monitoring

Sec. 3031. Hazardous waste site inventory.
Sec. 3032. Establishment of priorities.
Sec. 3033. Monitoring of inactive sites.
Sec. 3034. Immunity.
Sec. 3035. Destruction of records.

Subpart C—Hazardous Waste Response Authority

Sec. 3041. Emergency response.
Sec. 3042. National Hazardous Waste Response Plan.
Sec. 3043. State contribution.

Subpart D—Hazardous Waste Response Fund

Sec. 3051. Establishment of Fund.
Sec. 3052. Fees.

Subpart E—Prohibitions and Enforcement

Sec. 3061. Enforcement.

Subpart F—Liability for Hazardous Waste Release

Sec. 3071. Liability for releases.

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Subtitle C—Hazardous Waste Management

Part 1—Standards and Permits for Hazardous Waste Management

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Sec. 3001. (1) Criteria for Identification or Listing.—Not later than eighteen months after the date of the enactment of this Act, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this [subtitle,] *part*, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and Listing.—Not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5)), which shall be subject to the provisions of this [subtitle] *part*. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

(c) Petition by State Governor.—At any time after the date eighteen months after the enactment of this title, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Sec. 3002. Not later than eighteen months after the date of the enactment of this section, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this [subtitle,] *part*, as as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents

thereof which are significant in quantity, or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this [subtitle], *part,* or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052); and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this [subtitle] *part*, at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

(A) the quantities of hazardous waste identified or listed under this [subtitle] *part* that he has generated during a particular time period; and

(B) the disposition of all hazardous waste reported under subparagraph (A).

STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

SEC. 3003. (a) STANDARDS.—Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this [subtitle,] *part,* as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 3002(5); and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this [subtitle,] *part,* or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052).

(b) COORDINATION WITH REGULATIONS OF SECRETARY OF TRANSPORTATION.—In case of any hazardous waste identified or listed under this [subtitle] *part* which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Sec. 3004. Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this [subtitle,] *part*, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this title which is treated, stored, or disposal of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 3002(5);

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation training for personnel, and financial responsibility as may be necessary or desirable; and

(7) compliance with the requirements of section 3005 respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation, consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

Sec. 3005. (a) Permit Requirements.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this [subtitle] *part* to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit.

(b) Requirements of Permit Application.—Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this [subtitle,] *part*, or combinations of any such hazardous waste and any other solid waste, proposed to be disposal of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit Issuance.—Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 3004, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 3004, the permit shall specify the time allowed to complete the modifications.

(d) Permit Revocation.—Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 3006) of noncompliance by a facility having a permit under this title with the requirements of this section or section 3004, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 3006) shall revoke such permit.

(e) Interim Status.—Any person who—

(1) owns or operates a facility required to have a permit under this section which facility is in existence on the date of enactment of this Act,

(2) has complied with the requirements of section 3010(a), and

(3) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

AUTHORIZED STATE HAZARDOUS WASTE PROGRAMS

Sec. 3006. (a) Federal Guidelines.—Not later than eighteen months after the date of enactment of this Act, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the development of State hazardous waste programs.

(b) Authorization of State Program.—Any State which seeks to administer and enforce a hazardous waste program pursuant to this [subtitle] *part* may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this [subtitle] *part* in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this [subtitle,] *part,* (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this [subtitle.] *part.*

(c) Interim Authorization.—Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 3002, 3003, 3004, and 3005, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this [subtitle] *part.* The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this [subtitle.] *part,* grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this [subtitle] *part* for a twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 3002 through 3005.

(d) Effect of State Permit.—Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this [subtitle.] *part.*

(e) Withdrawal of Authorization.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this [subtitle.] *part.* The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

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RETENTION OF STATE AUTHORITY

SEC. 3009. Upon the effective date of regulations under this [subtitle] *part* no State or political subdivision may impose any requirements less stringent than those authorized under this [subtitle] *part* respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this [subtitle] *part* is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect.

EFFECTIVE DATE

SEC. 3010. (a) PRELIMINARY NOTIFICATION.—Not later than ninety days after promulgation or revision of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this [subtitle,] *part,* any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this [subtitle] *part* may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) EFFECTIVE DATE OR REGULATION.—The regulations under this [subtitle] *part* respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months, after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof).

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PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

Subpart A—General Provisions

COVERAGE OF PART

SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

DEFINITIONS

SEC. 3022. For purposes of this part, the term—

(1) "Inactive hazardous waste site" means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

(2) "Petrochemical feedstock" means the following: liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals: ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, and methane other than that used to make ammonia.

(3) "Release into the environment" means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

(A) which is subject to part 1 of this subtitle, or

(B) which is carried out in compliance with the requirements of this part and other applicable law.

(4)(A) "Supply" means, with respect to petrochemical feedstocks or inorganic elements and compounds, the production, manufacture, or importation of such feedstocks or compounds.

(B) "Supplier", with respect to petrochemical feedstocks or inorganic elements and compounds, means any person who supplies such feedstocks or compounds and who either—

(i) provides, through sale or any other means, the feedstocks or elements and compounds to other persons, or

(ii) uses the feedstocks or elements and compounds himself.

(5) "Threatened release" means a condition or situation where there exists a substantial likelihood that a release into the environment from or at an inactive site is imminent.

For purposes of this part, the terms "inorganic elements and compounds", "crude oil", and "refiner" shall have the meanings prescribed by the Administrator, by rule.

Subpart B—Inventory, Priorities, and Monitoring

HAZARDOUS WASTE SITE INVENTORY

SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the informaion referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within

3 months after the date of receipt from the Administrator of the forms required under this section.

(2) The information required to be provided under this subsection is as follows:

(A) a description of the location of the inactive hazardous waste site;

(B) the name and address of, or corporate headquaters of, the owner of the site, determined as of the date of submission of the information;

(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environement, and (iii) the nature of any other activity being carried out at such site;

(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental of health hazard which may be associated with such site; and

(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a 3 month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) such information as may be necessary or compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

(A) which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

(B) which owned or operated any such site on or before the date of the enactment of such Act; or

(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality.

Such information shall be provided on the forms referred to in paragraph (1).

(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

(1) The administrator shall have the authorities provided with respect to State programs under subsection (b);

(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

(1) a listing by State of the numbers of active and inactive hazardous waste sites;

(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

(4) a general decription of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

ESTABLISHMENT OF PRIORITIES

SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Containment Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

(2) consistent with the National Hazardous Waste Response Plan.

(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than 6 months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for purpose of establishing the national priorities under this subsection. The 100 inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the "top priority sites".

MONITORING OF INACTIVE SITES

SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

IMMUNITY

Sec. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

DESTRUCTION OF RECORDS

Sec. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

Subpart C—Hazardous Waste Response Authority

EMERGENCY RESPONSE

Sec. 3041. (a) Emergency Response Authority of Administrator.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at an inactive hazardous waste site presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediatley to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the administra-

tor shall, not later than 30 days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

(2) Whenever the Administrator determines that an inactive hazardous waste site presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order and with respect to the technical and financial capability of such party to take any such acticn and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include (i) assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release (ii) restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and (iii) assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 percent of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action. This paragraph shall apply only to those sites which have been listed by the Administrator under section 3032(b) as top priority sites.

(3)(A) Upon receipt of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste into the environment from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or the environment, and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such conditions.

(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

(i) 3 months from the date on which he initiates such action, or

(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

(4) The Administrator shall not exercise the authority of this subsection to engage in, or order, the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

(A) less expensive than undertaking such activity onsite; or

(B) essential to protect the public health or the environment due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste clean-up and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

(A) cooperative agreements involving the expenditure of appropriated funds, or

(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

(8) Anyone ordered or authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

(b) RESPONSIBLE PARTY.—As used in this section, the term "responsible party" means with respect to any inactive hazardous waste site, andy person who—

(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 307(a) for purposes of determining liability under that section in the case of a person causing or contributiong to a release or threatened release of hazardous waste.

(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides balance between——

(1) the need for protection of public health and the environment at the site under consideration,

(2) the availabiltiy of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health, or the environment; and

(3) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

(e) INTERIM SITES.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than 30 days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and assistance to any State program which the Administrator deems adequate to carry our such activities. Not more than 10 percent of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence with respect to the sites to which this subsection applies. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release into the environment' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water at or

from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

(A) the need for protection of public health and the environment at the site under consideration, and

(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health, safety, or the environment.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

(f) Wages.—(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Administrator shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

NATIONAL HAZARDOUS WASTE RESPONSE PLAN

SEC. 3042. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the "Plan"). Following such review and public hearings, but not later than 18 months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, or hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out under this part;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such cities.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions pursuant to this part shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

(1) methods and procedures for the removal of released hazardous waste;

(2) criteria for development of local and regional hazardous waste removal contingency plans; and

(3) procedures, methods, and equipment and other reqirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites undertaken pursuant to section 3041. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not limited to, measures for identifying hazards to which

persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into for purposes of remedial action under such section 3041 shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

STATE CONTRIBUTION

SEC. 3043. (a)(1) Not more than 90 percent of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 10 percent of such total costs shall be paid by the participating State in which the inactive hazardous waste site concerned is located. No amount may be expended by the Administrator for any such action unless the State in which such hazardous waste is located has established assurances satisfactory to the Administrator that—

(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources;

(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released;

(C) the State share of the costs under section 3041 will be available; and

(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which the Administrator has taken any action under paragraph (1) or (2) of section 3041(a).

(3) For purposes of this subsection, the term "long-term maintenance" shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January 1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

(b)(1) Paragraphs (1) and (2) of Subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 percent of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $500,000 with respect to any hazardous site.

(3) During the period ending 18 months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's 10 percent share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such 18 month period.

Subpart D—Hazardous Waste Response Fund

ESTABLISHMENT OF FUND

SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in Subsection (c).

(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

(A) an amount equal to all amounts collected as fees under section 3052.

(B) an amount equal to all amounts recovered by the United States under Subpart F.

(C) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041.

(D) any penalties assessed under this part, and

(E) amounts authorized to be appropriated to the fund under paragraph (3).

(2) The total amount deposited in the Fund which is derived from the fees collected under section 3052 and from appropriations under paragraph (3) shall not exceed—

(A) $100,000,000 for the fiscal year 1981,

(B) $150,000,000 for the fiscal year 1982,

(C) $150,000,000 for the fiscal year 1983, and

(D) $200,000,000 for the fiscal year 1984.

(3) There is authorized to be appropriated to the Fund for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $75,000,000,

(C) 1983, $75,000,000, and

(D) 1984, $100,000,000.

(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimaed by the Administrator and submitted to the Congress in the annual budget

submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for emergency response, removal, containment, clean-up, and other action carried out under subpart C, including reimbursement of excess costs pursuant to section 3041(c). Any amouts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

FEES

SEC. 3052. (a) IMPOSITION OF FEE.—(1) Under regulations promulgated by the Administrator, there shall be imposed on—

(A) each supplier of petrochemical feedstocks, a fee for each pound of petrochemical feedstocks supplied to any other person or used by such supplier,

(B) each supplier of inorganic elements and compounds, a fee for each pound of inorganic elements or compounds supplied to any other person or used by such supplier, and

(C) the receipt by any refiner of crude oil and the export by any person of crude oil, a fee per barrel of crude oil received or exported.

Such fees shall be imposed annually and on the basis of a schedule of rates established by the Administrator at such level as he annually estimates as necessary to recover the amounts specified in subsection (b). The schedule shall be modified annually by the Administrator in accordance with this section.

(2) The inorganic elements and compounds subject to the fee imposed under this subsection are—

(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, mercury, the equivalent weight of barium in barium sulfide, antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide, cobalt, nickel, the equivalent weight of tin in stannic chloride and stannous chloride;

(B) chlorine, the equivalent weight of fluorine in hydrofluoric acid and bromine;

(C) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloride acid, or nitric acid;

(D) elemental phosphorus; and

(E) such other inorganic elements and compounds as the Administrator may by rule provide, based upon information available to him as a result of listing or characterizing hazardous wastes or of implementing this Act.

(3) Any determination by the Administrator under paragraph (3)(E) to subject any other inorganic element or compound to the fee imposed under this subsection shall be based upon three or more of the following—

(A) A finding by the Administrator that the raw material from which such element or compound is derived, including in-

termediates and products of such raw material, is hazardous in more than one form.

(B) A finding by the Administrator that the generation of the raw material, intermediates, or products, from which such element or compound is derived results in hazardous waste.

(C) A finding by the Administrator that the raw material from which the element or compound is derived is produced in large amounts.

(D) A finding by the Administrator that the raw material from which the element or compound is derived is capable of increasing the hazard potential of other raw materials.

(4) No fee shall be imposed under this subsection on any quantity of feedstock or element or compound with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (A) or (B) of paragraph (1). Except for a fee imposed under such subparagraph (A) on the sale or use of petrochemical feestocks derived from any crude oil, no fee may be imposed under paragraph (1) on any crude oil with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (C) of such paragraph (1).

(6) For a period of three years after the initial date on which fees are imposed under this section, no fee shall be imposed under this section with respect to any petrochemical feedstock or inorganic element or compound which is used in the fertilizer production industry. If the Administrator determines that the use by such industry of any such feedstock, element, or compound has required expenditures for remedial action under this part, the Administrator may, after such three year period, impose a fee under this section with respect to such feedstocks, elements, or compounds used by such industry. The amount of such fee so imposed shall bear the same ratio to the total fees imposed under this section as the expenditures for remedial action under this part resulting from the use by the fertilizer industry of such feedstocks, elements, and compounds bears to the total expenditures for remedial action under this part.

(b) AMOUNT OF FEE.—(1) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of petrochemical feedstocks shall not exceed the lesser of—

(A) 0.5 cent per pound of petrochemical feedstock supplied or used,

(B) 2 percent of the price in the case of petrochemical feedstock when sold at arms length by the supplier,

(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

(i) 1981, $30,000,000,
(ii) 1982, $45,000,000,
(iii) 1983, $45,000,000, and
(iv) 1984, $60,000,000, or

(D) such amount as is necessary to produce revenues equal to 60 percent of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

(2) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of inorganic elements or compounds shall not exceed the lesser of—

(A) $5 per ton of inorganic elements of compounds supplied or used,

(B) 2 percent of the price in the case of inorganic elements or compounds when sold at arms length by the supplier,

(D) such amount as is necessary to produce revenues equal to, for the fiscal year—

(i) 1981, $10,000,000,
(ii) 1982, $15,000,000,
(iii) 1983, $15,000,000, and
(iv) 1984, $20,000,000, or

(D) such amount as is necessary to produce revenues equal to 20 percent of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

(3) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the receipt of crude oil shall not exceed the lesser of—

(A) 3 cents per barrel of crude oil received,

(B) such amount as is necessary to produce revenues equal to, for the fiscal year—

(i) 1981, $10,000,000,
(ii) 1982, $15,000,000,
(iii) 1983, $15,000,000, and
(iv) 1984, $20,000,000, or

(C) such amount as is necessary to produce revenues equal to 20 percent of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

(4) In order to provide an economic incentive for the recycling and reuse of any feedstock, element, or compound referred to in subsection (a)(1) (A) or (B), the Administrator may reduce the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound in proportion to the extent that he determines any portion of that the feedstock, element, or compound to be—

(A) removed from the waste stream of a production process and recycled in such production process, reintroduced into products, or used as a source of energy, or

(B) derived from rcycled material.

No reduction under this paragraph with respect to any feedstock, element, or compound may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound.

(c) COLLECTION OF FEES.—(1) The time and manner of payment of the fee shall be specified, the reporting and submission of information necessary to collect the fee shall be required, and the collection of the fees shall be carried out, by such department or agency of the United States as the President shall designate in such manner as such department or agency shall, by rule, establish.

(2) Any person required to pay any fee or comply with any other requirement imposed under regulations promulgated under subsection (a) who fails or refuses to pay such fee, together with interest thereon (at prevailing rates as determined by the Secretary of the Treasury) in accordance with regulations under this section shall, in addition to liability for any such fee, pay a civil penalty of $2,000 for each day during which such failure or refusal continues.

(d) JUDICIAL REVIEW OF FEE REGULATIONS.—No regulation of the Administrator imposing any fee under this section, and no modification of any such regulation, may be stayed by any court pending completion of judicial proceedings for the review of such regulation or modification.

(e) EFFECTIVE DATE.—The fees imposed under regulations pursuant to this section shall apply to—

(1) petrochemical feedstocks and inorganic elements and compounds, supplied or used,

(2) crude oil received

on or after October 1, 1980.

(f) REPORT.—The Administration, in consultation with the Secretary of the Treasury and other appropriate Federal departments, agencies, and instrumentalities, and with representative of affected industries, shall devise a fee schedule based upon the disposal or generation of hazardous waste. Such schedule shall, to the minimum extent practicable, be based upon—

(1) the degree of hazard to public health and the environment posed by the various categories of hazardous wastes; and

(2) the risk of harm to public health and the environment posed by such wastes so as to accurately and equitably reflect the costs of such risks in the production stream from which such waste is generated;

and shall minimize administrative, regulatory, and reporting burdens by relying on existing or readily obtainable information. Within one year from the date of the enactment of this subsection, the Administrator shall submit to the appropriate committees of Congress a preliminary report identifying the issues involved in carrying out this subsection. Within two years after such date of enactment, the Administrator shall submit to such committees a final report setting forth the fee schedule devised pursuant to this subsection. There is authorized to be appropriated to carry out this subsection not more than $2,000,000 to remain available until expended.

Subpart E—Enforcement

ENFORCEMENT

SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or initiate the effects of such release, and other appropriate factors.

(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Admininstrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

(b) CRIMINAL PENALTY.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than 1 year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than 1 year, or both.

Subpart F—Liability for Hazardous Waste Release

"LIABILITY FOR RELEASES

SEC. 3071.(a) LIABILITY.—(1) Except for a release, or threatened release, of hazardous waste which the defendant establishes to be caused solely by—

(A) an act of God or an act of war,

(B) negligence on the part of the government of the United States,

(C) an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, or

(D) any combination of the foregoing

where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release.

(2)(A) If a generator or transporter of hazardous waste establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste generated or transported by him, such generator or transporter shall be liable under this subsection only for such portion. If the owner or operator of any inactive hazardous waste site establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste which was treated, stored, or disposed of in a period during which he owned or operated the site, such owner or operator shall be liable under this section only for such portion.

(B) To the extent apportionment is not established under subparagraph (A), the court shall apportion the liability, to the maximum extent practicable, among the parties based upon evidence presented by the parties as to their contributions.

(C) Following any apportionment under this paragraph, no person shall be required to pay in excess of his apportioned share of the total costs described in subsection (b).

(b) Costs.—The costs for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste are the costs of any rmoval, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c) and any costs incurred by a State or local government with respect to such release.

(c) To whom Liable.—The liability for costs described in subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c), the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in under subparagraph (A), the court shall apportion the liability, to the maximum extent practicable, among the parties based upon evidence presented by the parties as to their contributions.

(C) Following any apportionment under this paragraph, no person shall be required to pay in excess of his apportioned share of the total costs described in subsection (b).

(b) Costs.—The costs for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste the costs of any removal, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c) and any costs incurred by a State or local government with respect to such release.

(c) To Whom Liable.—The liability for costs described in subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c), the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in subsection (b)(1), shall bring an action under this section for the recovery of such costs against the person liable promptly following his determination of the amount of any such costs.

(d) Liability Under Other Authority of Law.—Nothing in this section shall affect the liability of any person under any other authority of law for any release, or threatened release, of hazardous waste, except that the amount recovered by such person under any other authority of law for any costs to which this section applies shall reduce the amount which such person may recover under this section for such costs.

(d) Liability of Other Persons.—Nothing in this section shall affect the liability of any other person, including a guarantor, by reason of subrogation, indemnification agreement or otherwise, to a person held liable under this section.

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ADDITIONAL VIEWS FOR 'SUPERFUND" REPORT

I voted for the measure approved by our committee and I strongly support the goal of this legislation, which is to provide the beginning of an equitable solution to the environmental and health problems created by decades of reckless and irresponsible disposal of chemical wastes.

I fear, however, that because of some major shortcomings in the committee bill, the goal may not be fully realized. To begin with, the so-called "superfund" created by the bill is far too small to make a reasonable start on correcting this enormous environmental problem. Second, the formula governing contributions to the fund provided in this bill is not equitable—because it requires the federal taxpayers to pay a greater portion than they should of the cost of cleaning up dumpsites created primarily by the chemical industry.

In addition to creating the fund, the other main goal of the legislation originally was to clarify and codify long-standing common law theories as they relate to liability for damages caused by hazardous waste disposal activities. This goal, too, I strongly support. But in this area also I must conclude that the committee bill falls short of the goal. Indeed, the bill actually creates new legal loopholes through which chemical companies can escape liability for damages for which they are in fact responsible.

First with reference to the size of the fund: This fund is to be used to find, assess and, where warranted, clean up abandoned hazardous waste sites when the company or companies responsible for creating the problem either no longer exist, cannot be identified or lack the financial resources to clean up their own messes. Residents of areas affected by such "orphan" dumps simply have no place else to turn for abatement of this problem, which has led to poisoned drinking water, increased incidence of cancer, birth defects, miscarriages, skin ailments and respiratory ailments.

A $600 million fund for four years of cleanup activities, as authorized by the Committee bill, would be terribly inadequate to address this problem. The cost of a nationwide inventory and of administrative activities would have to come out of this amount before any money could be devoted to cleanup activities. EPA has estimated that only about 70 sites could be cleaned up out the thousands that urgently need attention. A number of sites that are now endangering the public health and the national envioronment would be ignored, not for lack of urgency but for lack of adequate resources.

Doubling the size of the fund, as one of the amendments I offered in committee would have done, would more than triple the number of sites that could be treated, because the inventory and administrative costs are fixed.

My proposal to double the fund would not have increased the budgetary impact of the program, because it would have held the federal contribution constant while changing the percentage of the industry's contribution to the fund. The 50-50 ratio contained in the committee bill not only creates an inadequate fund, it is based on inequitable reasoning.

The argument that the federal taxpayers and the chemical companies are equally responsible for cleaning up a mess that was created primarily by decades of recklessness by the industry is unreasonable and unfair.

In the decades since the postwar petrochemical boom, only the chemical companies themselves had the expertise to understand the damage their dumping practices were doing to the environment. They chose to recklessly disregard that damage and benefitted from the economics of cheap disposal practices.

Hazardous wastes have been poured into the ground as if there were no limit to what the earth could absorb. More than 100 billion pounds of wastes per year are disposed of improperly and the volume continues to rise. In places like the Love Canal in Niagara Falls, N.Y.; Montague, Mich. and Toone, Tenn. the limits have been demonstrated. Drinking water laced with carcinogenic chemicals, "soil" that ignites spontaneously, and air that carries particles of toxic chemicals are part of the terrible price for decades of reckless chemicals waste disposal.

The public's only contribution to the problem was to trust too blindly that the chemical companies were taking of their own messes. The public is already bearing more than its fair share of the cost of the recklessness in the form of threats to the public health and damage to the public's environment. What the public demands and what this bill ought to provide is a fair and reasonable division of the cost of cleaning up the mess. Requiring the chemical companies, through a small fee on each ton of hazardous chemicals processed, to pay 75 percent of the fund to clean up this mess is extremely reasonable.

Changing the ratio of contributions to 75 percent industry and 25 percent general revenues has the double advantage of more equitably reflecting the responsibility for the problem and creating a fund that EPA estimates would pay for the cleanup of 250 sites.

While the press and public have primarily focused on the "superfund" provisions of the bill, the liability sections are also important in addressing the existing problem and creating a strong incentive to ensure that a high standard of care is observed by future generators, handlers and disposers of hazardous wastes. The original bill would have taken a strong step in this direction by maintaining a revolving fund, which would be replenished as damages were recovered in cases where some of the "culprits" could be identified; and by clarifying the liability theories under which injured private parties could seek damages from responsible culprits. The drastic whittling down of the original liability provisions seriously undermines these objectives.

What is needed is a liability section that accomplishes three major goals.

First, it must be made clear that victims of damages arising from releases of hazardous wastes can make a claim in federal court to recover damages. Existing state tort laws present a convoluted maze of requirements under which a victim is confronted with a complex of often unreasonable requirements with regard to theories of causation, limited resources, statutes of limitations and other roadblocks that make it extremely difficult for a victim to be compensated for damages. A clear, uniform federal law defining a victim's cause of action in these areas is sorely needed but the committee bill does not provide one.

Second, the concept of joint and several liability was essentially deleted from the committee bill. Under the bill, the burden of proof is shifted to the government to establish the exact extent of a particular party's contribution to the problem. The likelihood of 100 percent of the damages ever being recovered is drastically reduced and the chances of the revolving fund remaining viable are similarly remote. Innocent victims will continue to pay a large portion of the cost of correcting a problem they did nothing to create.

The other major problem is that the third party defense provision of the committee bill offers a gaping loophole through which companies can escape liability when the government sues to force a cleanup. Under that provision, a company that contract out the job of waste disposal may be able to contract away legal liability for damages caused by improper disposal of its waste. Thus the company has a greatly reduced incentive to ensure that its waste is safely disposed of.

Despite the shortcomings enumerated above, the committee bill provides an urgently needed mechanism to begin the task of mopping up after years of indiscriminate and perilous waste disposal practices. I supported the bill in committee and will support it on final passage. Before that vote, however, I hope to offer amendments to correct some of the deficiencies I have discussed.

ALBERT GORE, Jr.

ADDITIONAL VIEWS OF REPRESENTATIVE DANNEMEYER TO H.R. 7020 (HAZARDOUS WASTE SUPERFUND)

When the epitaph is written, if one is ever written, for the inactive hazardous waste site cleanup bill (H.R. 7020) just reported by the full Commerce Committee it may well read, "noble of purpose but notorious in operation." In theory at least, H.R. 7020 represents a well intentioned effort to resolve what is, in the areas affected at least, a serious problem. But, in practice, the reliance the bill places on the federal government as the court of first, rather than last resort is, at best, a repeat of the knee jerk federal paternalism of the 1960's and early 1970's. At worst, it could add unnecessary government regulation, and expense, to taxpayers and consumers already overburdened by inflation and overregulation.

The underlying assumption behind assessing a fee for hazardous waste cleanup, which the Administrator of EPA would then use to respond to emergency situations involving inactive or abandoned waste sites, is that neither private enterprise nor state government can handle the situation. However, information and testimony received by the Oversight Subcommittee of this committee challenges this basic assumption.

For instance, one witness, the Secretary for the Department for Natural Resources and Environmental Protection for the state of Kentucky, indicated that: "Given a reasonable opportunity to do so * * * they (private firms) would build commercial incinerators and incinerate hydrocarbon, organic based material that could safely be incinerated without a dime of public money." In fact, the gentleman went so far as to suggest that, with perhaps the exception of highly hazardous wastes, private firms could make a profit from an incineration process.

The high temperature (2,500°) incinerators the witness had in mind are more than just a sketch on an architect's drawing board; in fact, several are already in operation in this country and more especially in Europe. Additional revenue to help finance their operation could come from the steam they produced which, assuming an adequate supply of waste was forthcoming, could be converted to power and sold. In short, it is not inconceivable that, between charging individuals and businesses for the disposal of wastes, and the revenues generated from the sale of power, a hazardous waste disposal incinerator operation could make enough money to clean up many abandoned sites in its area and still show a profit. The obligation to clean up the abandoned or inactive sites might be tied to receipt of the necessary permits to run the operation.

Likewise, with regard to the ability of the states to handle the problem of hazardous wastes in those places where it might not be feasible for private enterprise to do so, information contained within the Oversight Subcommittee's September 1979 Hazardous Waste Disposal Report indicated that while many states have been lax, several states, notably California and Maryland, have developed effective laws for dealing with hazardous waste problems. Perhaps even more significantly, the failure of EPA to promulgate regulations under the Resource Conservation and Recovery Act (RCRA) has inhibited state action in the field of hazardous waste disposal. That being the case, one must further question the logic of giving a federal official, in this case the Administrator of the EPA, such sweeping powers to clean up, or order others to clean up, an inactive site when state government, which might be more familiar with the site and its relationship to the surrounding area, may be completely capable of taking action.

In short, H.R. 7020 seems to be an excellent legislative example of putting the cart before the horse. Especially in light of EPA's poor track record, both with regard to the content of its regulations and their timeliness, it would make far more sense to pass only that portion of the bill calling for a study of the scope of the problem and the willingness and ability of private industry to deal with it. That way, Congress would get the information it needs to make a reasoned decision before, rather than after, the fact.

WILLIAM E. DANNEMEYER.

SUPPLEMENTAL VIEWS ON H.R. 7020, HAZARDOUS WASTE CONTAINMENT ACT

There is a need for legislation to deal with the problem of cleaning up abandoned and inactive hazardous waste sites. As was stated in the additional views of the Minority Members of the Committee on Oversight and Investigations in response to the hazardous waste disposal report, "We believe that the issue of hazardous waste disposal should be one of the first priorities for this nation." Unfortunately the guiding philosophy behind H.R. 7020 was summed up by a recent quote by one of its principal architects at the Department of Justice who said: "Government is perfectly prepared to punish the innocent for the sins of the guilty."

The Deputy Administrator of EPA seems more intent on putting out press releases announcing suits against industry than she does in speeding EPA's promulgation of regulations that would help control these hazardous waste disposal sites. Recently she was quoted as saying, "there were from 1,200 to 2,000 problem sites." Congressman Eckhardt's Oversight and Investigations Subcommittee refers to a potential universe of 851 sites, and notes that the chemical industry was doing a much better job of managing its hazardous waste disposal activities than EPA is doing with implementatoin of the RCRA regulations which should have been issued over two years ago.

H.R. 7020 is just one of the many "Superfund" proposals being considered in this Congress. Before any of these various bills are made workable, we must get a better idea of the true scope of the problem.

The fact is we do not know the scope of the problem. We need to have the facts and reliable information before we allow an emotional reaction to force the Congress to create a huge pot of money which is either wasted or permits EPA rather than Congress to use the money as it sees fit.

We recognize that there is a gap in existing law for dealing with the establishment of programs to contain orphan hazardous waste disposal sites. We would support legislation that would close this gap. However, such legislation should focus on this narrow problem of orphan hazardous waste sites and should not be blown out of proportion as is the case with H.R. 7020.

As is the case with other "Superfund" proposals, H.R. 7020 extends the punishment rather than cleanup concept by creating new federal tort law standards and giving the Administrator of EPA new, unrestricted discretionary authority.

We do not quarrel with the proposition that a responsible party should have to pay. The problem is that this legislation goes much further. It is intended to give access to the "deep pockets" of whatever company has the money to pay regardless of the degree of culpability. This concept may be expedient, but it certainly flies in the face of fundamental fairness and equity.

This bill would provide that any organization having contributed in any degree to hazardous waste release could be held responsible for the cleanup and damages. Its authors have apparently lost sight of the fact that our principal concern should be the cleaning up of dangerous sites. Instead, this bill would give EPA new and unnecessary bureaucratic authority, create tremendous burdens on our federal courts, and impose onerous and unreasonable liability standards.

H.R. 7020 ia a good idea that simply misses its mark. It is deficient in a number of key respects and must be improved.

First, H.R. 7020 overlaps existing state tort law by imposing strict, joint and several liability on any person who caused or contribued to a release or threatened release. This creation of Federal cause of action constitutes an unwarranted intrusion of the Federal government in an area which is traditionally handled by state law.

Rarely has Congress attempted to displace or overlap state tort law by establishing Federal causes of action. There is demonstrated need for the Federal government to usurp this responsibility in this case.

Under the language of H.R. 7020, a generator of hazardous waste could be interpreted to have "contributed to" a release merely by generating the waste that was released. This would place an unfair burden on the waste generator. The mere fact of generating a hazardous waste should not make the generator liable. This simply invites the government and other claimants to seek the deepest pocket for recovery.

Moreover, the liability provisions of H.R. 7020 are not based on sound causation principles. Common law tort theories provide a carefully structured system for use in determining causation. This system, the product of centuries of efforts to devise a fair and equitable formula, should not be lightly overturned in favor of loose causation principles. There is substantial difference between a welfare system and a tort law system. Welfare is the relief which society provides to parties who are in need, or who have been injured and have no other source of relief. Tort law, however, is a system which provides relief to injured parties by means of assigning responsibility and accountability to some other individual or institution in society. Society, itself, does not pay the relief provided by the tort law system. Instead, relief flows from party-to-party on the basis of a determination of legal responsibility.

H.R. 7020 blurs the distinction between a welfare system and a tort law system. Traditionally, compensation is provided under a welfare system which is paid for by the taxpayers. Hybrid compensation systems, such as workers' compensation, provide benefits from a fund created by private entities, but only in exchange for relieving such private entities from other tort responsibility. This bill imposes both a fee and strict liability on private parties without relieving them of any legal liability.

Second, the "emergency response authority" provided by the Administrator of EPA in H.R. 7020 is entirely too broad. The bill grants the EPA Administrator almost absolute discretion to act on his own or to order others to take action to clean up or contain discharges without adequate provisions for due process and without adequate constraints against waste and excessive cost. This discretionary authority goes beyond what should be the scope of H.R. 7020 because it would allow the Administrator to take action with respect to releases which may not have emanated from an inactive hazardous waste site. In addition, the Administrator has almost total discretion to choose any type of action he deems appropriate.

Finally, H.R. 7020 imposes an inflationary fee on industry. It in effect unfairly places the burden on today's companies, shareholders, or customers for practices, failures or shortcomings of yesterday's industrial producers. That fee which will be used to fund clean-up and abatement related to orphan or inactive dump sites raises very substantial constitutional questions under the due process clause of the Fifth Amendment.

The Washington Post, in a recent editorial, pinpointed one of the major problems with the fee contained in this bill:

> * * * the trouble (with the fee) is that this approach makes no distinction between companies that are careful with their waste and those that are careless or even grossly negligent. Consequently, it removes most of the incentive to improve. If you have already paid once (into the fund), it is hardly good business to pay twice by, for example, redesigning your process so it generates less waste. Thus, Superfund violates the tenent that regulation should be designed to encourage a higher standard of care: to prevent damage, not punish.

In conclusion, all of us want to make America safe by cleaning up hazardous waste sites. H.R. 7020 in its attempt to reach that goal creates a serious problem by trying to achieve a number of purposes completely unrelated to clean-up or containment. Those extraneous matters—strict, joint and several liability, unwarranted EPA discretion, and a new inflationary fee indiscriminately placed on wrongdoers and non-wrongdoers—require major revisions before the praiseworthy goals of the bill can be accomplished—namely, cleaning up dangerous hazardous waste sites in America.

JAMES T. BROYHILL.
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DISSENTING VIEWS OF REPRESENTATIVES STOCKMAN AND LOEFFLER

H.R. 7020, the "Hazardous Waste Containment Act of 1980," is a replay of the patented formula for environmental legislation developed over the past decade. A barrage of statutory language employing ill-defined concepts; a vast administrative delegation with no sound analysis of the problem; a lack of explicit policy choices and parameters; and an implicit cost of billions in national economic resources for marginal or non-existent social benefits. Having established this pattern of regulatory overkill in the 1970's, the nation is now paying the price in the form of worsening economic conditions, stagflation, collapsing productivity and international competitiveness, declining living standards, and rising welfare costs.

The bill as reported inadvertently embodies an anti-industrial, zero-discharge mentality that has nothing to do with the palpable, discrete, and practical problem of abandoned waste sites that pose true hazards and require a measured public policy remedy. Instead, the bill is motivated by a sweeping environmental ideology that views the by-products of industrial activity as inherently malign—a blight encapsulated in thousands of ticking time bombs capable of releasing of a torrent of poisons, toxins, carcinogens, fires, and explosions on an unwary public at any moment.

This is pure fiction. A Love Canal, Valley of the Drums, or Chemical Control Corporation incident does not establish a systemic, generalized, and perilous pattern. Indeed, the available empirical evidence suggests just the contrary: that the former situations are aberrant rather than pandemic.

For the better part of this century, the quantity of wastes, including toxins and other hazardous material, has been steadily increasing as industrial output has risen and new products and processes introduced. At the same time, state law and the common law have been elaborated and direct regulatory programs at the local and state level established that place stricter liability on generators of waste in order to safeguard public health and property rights. Admittedly, this evolution has been halting, incomplete, uneven among states, and sadly deficient in a number of particulars.

But the point is the however imperfect, it has been an intensifying deterrent to improper disposal and storage. Were this not the case, the headlines over the past few decades would have been filled with Love Canal episodes.

The EPA has widely published the findings of a 60 day study by Fred C. Hart Associates Inc., a contract research firm that estimated an inventory of 32,254 to 50,664 abandoned hazardous waste disposal sites. Although the study was performed in a short period and is based on questionable assumptions extrapolated from 232 actual cases—only 24 of which were visited—it provides the basis for EPA's site inventory and claim that clean-up costs will exceed $44 billion. The validity of the Hart report was questioned by Congressman Eckhardt's Subcommittee on Oversight and Investigation which estimated that 851 potentially hazardous sites exist. The Oversight Subcommittee report discredits the Hart Study:

> While this report has many methodological flaws, the inadequacy of its fundamental data base alone is enough to discredit the study. The estimate of the number of sites and the degree of hazard that they pose is little better than pure guesswork and thus the cleanup estimates are unreliable.

EPA misused data in its widely circulated booklet "Everybody's Problem: Hazardous Waste," which states that 90 percent of the hazardous waste in the United States is disposed of by environmentally unsound methods, principally by "midnight dumpers." The facts do not support this thesis. An analysis of data supplied to Congressman Eckhardt's subcommittee by PEDCO Environmental Inc., of process waste from major chemical companies (60 percent of the industrial hazardous waste) between 1950 and 1979 shows that 9 percent of the 827 million tons was disposed of on-site. EPA's figure of 90 percent was derived erroneously from the CMA Surface impoundment and Landfill Survey, which indicated that sites would not meet proposed RCRA siting and design standards. But a failure to meet proposed standards does not necessarily constitute environmentally unsound disposal.

In short, there has never existed, especially in recent times, a regulatory or legal vacuum that permitted widespread gross irresponsibility and negligence in disposal and storage, nor are we consequently faced today with a national landscape thickly littered with industrial time bombs.

The underlying notion of the bill—presence of a latent public health and environmental catastrophe—is wrong and the vast machinery it erects to combat this imagined hazard is wasteful and unnecessary. The bill rests on a cascade of assumptions that are simply not sustainable: (a) most industrial waste is hazardous; (b) most releases from a site pose a danger; and (c) all poorly stored wastes pose an equal threat to public health and the environment. The bill thus does not differentiate between the response taken to correct a "Love Canal" from that necessary to mitigate leaf damage to healthy evergreen strands.

Hazardous waste disposal sites that pose significant threats to public health comprise only a fraction of the number projected in the EPA report. Currently, the total number of Federal, State, and local law suits planned or filed against waste disposers is under 200. Of the 13 Federal suits, 7 are against a single company. A telephone survey conducted in February, 1980, by CMA of State Environmental Agencies produced the following inventory:

Sites without financially viable owners	175
Potentially hazardous sites	431
Known disposal sites of industrial waste	4,196
Total sites	4,802

This is far fewer than the EPA estimate of 30,000 to 50,000 sites in the Hart Study.

UNDIRECTED REGULATORY BLUNDERBUSS

The bill prescribes drastic overkill and resource waste in three separate dimensions: inventory requirements, monitoring, and clean-up.

Comprehensive National Dump Site Census.—The inventory required by the bill is not a prudent, quick identification of orphan sites posing serious hazards. There are undoubtedly hundreds of thousands of sites at which commercial and household waste has been disposed over the years. The majority have been stored in places and by methods posing no threat to public health. Many of the nation's subsidivisions, shopping centers, and factories sit on such land-fills and other sites.

But the policy and language of the bill is so expansive and illdefined that most fall within its ambit of coverage. This is due to the negative definition of an inactive site, which includes everything except a few hundred sites licensed under strict RCRA standards and those sites that do not contain even traces of the mountain of chemical formulations and brand names listed as "hazardous" materials in pending regulations.

For example, a recent Michigan Department of Natural Resources report identified over 50,000 sites that have the potential to cause groundwater contamination, yet only 132 of these are known to have caused contamination. Sites listed in the inventory include gasoline stations and residential septic tank tile field systems. The Michigan DNR estimated it will cost $100 million solely for analysis to determine the extent of contamination. While the DNR completes this laborious process attention is diverted from serious situations.

By mid-July, 1980, EPA estimates that 1167 substances will be listed as hazardous. The RCRA definition of hazardous is sweeping; it includes any substance that is flammable, corrosive, reactive, or toxic. My own home is filled with hazardous substances, including sodium hypochlorite (bleach); sulfuric acid and lead (batteries); naphthalene (Mr. Clean or Fantastic Spray Cleaner); as well as essentials for life on Capitol Hill such as "Mouse-Rid", "Rat-Kill", and "Rat-Guide." Although household wastes are excluded from the RCRA requirements, the substances named in the regulations as hazardous are not.

Every municipal dump in the country probably contains hazardous substances listed in the RCRA regulation. Every telephone pole or railroad tie treated with creosote—a hazardous substance on the EPA list—might need to be inventoried and assessed.

If we want a managable, meaningful inventory of the small universe of potentially hazardous, orphaned or poorly maintained sites, then the legislation should have limited the inventory to:

(a) Active or likely discharge sites that threaten to release hazardous materials in sufficient quantities to pose serious threats to public health. As it is, the legislation will require an inventory of everything that exists. Site owners or state governments now have an obligation to put these in the National Register, to submit hydrological and geographical data and document if there have ever been releases.

(b) Hazardous materials should have been defined in terms of a common sense generic definition having to do with quantities, proximities to population or streams/aquifers, historical source (i.e. industrial), and inherent potential for adverse health effects—fire, explosion, poison—not an incorporation of the RCRA chemistry book.

The current legislation will result in a massive census of all dump and storage sites. A more thoughtful piece of legislation would have focused on situations where waste exuded beyond the boundaries of a disposal site and threatened to cause harms.

Excessive Monitoring.—Section 303 gives total policy discretion to EPA as to whether 100, 1,000, 10,000 or 100,000 of the sites identified by the inventory will be subject to regular monitoring requirements. The legislative concept that a site must pose "likelihood of harm to public health and the environment" is utterly meaningless. Depending upon its interpretation, any release could "harm the environment."

Examples abound in which industrial facilities meeting zero-discharge standards have caused environmental damage by returning pure water to a brackish environment because the natural pH of rainfall was more acidic than discharges allowed by the Corps of Engineers. The ecosystem can be quite fragile and easily "harmed."

Moreover, EPA will determine both the frequency and method of compliance with monitoring for release. And it can shift the burden to any "deep pocket" that formerly owned the site. The Hazardous Waste Containment Act will create a good growth business for environmental contract firms, who can sell monitoring services to hapless owners of inert sites.

The "environment" criteria here and elsewhere in the bill are totally inappropriate unless they involve public lands or waters in drastic ways. In all other cases, aggrieved owners can seek court relief. This bill should be limited to protecting the health of the unsuspecting public—people such as those who lived near Love Canal.

Emergency Response/Clean-Up—Plenary Powers.—Subpart C of the bill completes the circle, bringing in all RCRA interim sites exempted from inventory under the EPA Administrator's response—clean-up authority.

The "substantial endangerment" and "unreasonable risk of harm" criteria in Section 3041 Paragraph (1), (2), (3) or (4) are not meaningful because they apply to the undefined term "environment" as well as to public health. There is no prior reason why major costs should be incurred to prevent damage to minor environmental assets—unless you believe in zero discharge. Waste disposal sites are not pristine wilderness areas. The intent of Superfund should have been to ensure containment of hazardous waste within the disposal site. Such containment could be achieved at a fraction of the cost of "complete waste removal and redisposal at secured facilities" as described in the EPA/Fred C. Hart Associates report.

There is no real criteria to enforce cost minimization in the response plan. The bill provides EPA with total discretion to determine what measures are necessary to mitigate public health and environmental threats. Section 3041 Paragraph (2) and (4) do not deal with active releases (e.g. real dangers) but only with undefined hypothetical threats ("presents or may present"). This opens the door to clean-up of thousands of sites with no documented evidence of potential for harmful discharges.

In short, clean-up methods and costs are wide open and authority to order and directly fund cleanup is plenary, rather than limited to cases of imminent threat to public health. The underlying aim is not the conventional notion of protection of public safety, but an ideological goal of zero-discharge, zero-risk.

SUPERFUND: JUST THE TIP OF THE ICEBERG

The cost to the national economy of all this excess is not even hinted at by the funds authorized for grants-to-states or by the amounts targeted for the Superfund from fees and Federal grants. The preponderance of the cost to conduct the inventory, monitoring, and cleanup will be absorbed by the private sector. State grant funds provide only the seed money and Superfund is only a revolving account that will be replenished by recovery from the private sector. The real costs of this program could exceed $50 billion over the next ten years. Some experts have estimated that costs could exceed those spent on the Clean Air Act if the EPA seeks zero-discharge, zero-risk, and environmental purification versus a more appropriate notion of protection of public health.

FEEDSTOCK FEES: POOR POLICY AND BAD PRECEDENT

This bill addresses past externalities, not current or future ones in which sound policy principles would dictate that users absorb control costs. The general treasury should bear the expense associated with correcting hazards resulting from inadequacies in past legal structures and policy. Legal actions should be taken against firms or "midnight dumpers" that conducted illegal practices. The misconduct of a few irresponsible firms should not be grounds to penalize the entire industrial community, the majority of which acted in a responsible manner in handling hazardous waste by then existing laws.

A uniform fee on all current producers is nonsense: some of the firms being assessed did not exist; all were not guilty, nor benefitted equally from the deficiencies of the control policy. Emission fees are not designed to punish or raise revenues, but rather to force incorporation of the costs for use of a public good into the price of the final product. Superfund is a misuse of an emissions fee. A fee cannot be retroactively assessed in proportion to the actual social cost imposed.

It might be possible to be more sanguine about the future of the Superfund program established by the Committee bill if it were not for the record of the past decade. Although the bill's proponents are motivated by the most sincere of desires to correct a genuine problem, by following the model of previous environmental legislation the Committee is opening the door to a regulatory scheme so sweeping that its boundaries can only be imagined at present. Just as in the case of the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the handful of lesser environmental enabling acts, the Congress is handing the critical policy choice of how much of our national resources to devote to a particular problem to an agency that views its mission as the achievement of zero discharges. The predictable result: the siphoning of scarce capital, technical, and physical resources from highly productive activities to activities with little or no economic and social return. In the case of the Superfund, we have the opportunity to avoid the mistakes of the past. I hope that the House will reject the Committee bill and demand instead a solution more appropriate to the scale of the problem.

TOM LOEFFLER.
DAVE STOCKMAN.

[JOINT COMMITTEE PRINT]

DESCRIPTION OF REVENUE ASPECTS OF PROPOSALS (H.R. 85 AND H.R. 7020)

RELATING TO

OIL POLLUTION LIABILITY AND HAZARDOUS WASTE CONTAINMENT

SCHEDULED FOR A HEARING

BY THE

COMMITTEE ON WAYS AND MEANS

ON JUNE 2, 1980

PREPARED FOR THE

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INTRODUCTION

This pamphlet provides a description of H.R. 85 (the "Comprehensive Oil Pollution Liability and Compensation Act") and H.R. 7020 (the "Hazardous Waste Containment Act"), which were referred sequentially to the Committee on Ways and Means, until June 20, 1980, for consideration of their revenue provisions. These bills are scheduled for public hearings by the Committee on Ways and Means on June 2, 1980.

The bills would establish fees on crude oil, petrochemical feedstocks and certain specified chemicals. These fees would be deposited into various funds, which would be available to compensate for specified costs and damages which occur as a result of release of oil and hazardous substances into the environment. The bills also define the liability of those who may be responsible for these releases. The funds would be reimbursed for their outlays incurred in compensating for specified damages and also would receive general revenues and penalties collected under these provisions.

H.R. 85, as reported by the Committee on Merchant Marine and Fisheries, deals with releases of oil into navigable waters. H.R. 85, as reported by the Committee on Public Works and Transportation, deals with releases of both oil and hazardous substances into navigable waters. H.R. 7020, as reported by the Committee on Interstate and Foreign Commerce, deals with releases of hazardous wastes into media other than navigable waters, such as air, land and ground water.

The first part of the pamphlet is a description of present law. This is followed in part II with a description of the provisions of H.R. 85 and H.R. 7020, as reported. Part III is a description of the Administration proposal (introduced as H.R. 4566).

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I. PRESENT LAW

Overview

Under present law, there is no specially designated fund intended to compensate for damages and economic losses resulting from discharges of environmentally hazardous substances and wastes, such as crude oil and various organic and inorganic chemicals and feedstocks. Similarly, there is no general fee imposed with respect to such substances, and earmarked for use in compensating for damages from harmful discharges. However, there are various State and Federal funds designated to compensate for damages and economic losses resulting from specific types of spills, releases, and discharges. In addition, in some instances, particular fees are imposed under present law with respect to petroleum.

Although present law contains numerous provisions which prohibit, and which impose liability for, environmentally hazardous discharges, some damages remain uncompensated. This is due, in part, to limitations on liability (both financial and legal), defenses, or an inability to locate the party responsible for the damage.

Selected Statutes

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) establishes a $35 million revolving fund maintained by fines, penalties and appropriations of general revenue. The fund may be used for cleanup of releases of oil and designated hazardous substances into navigable waters and restoration of accompanying natural resources. The Act also establishes certain rules pertaining to responsibility for cleanup expenses, and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act (TAPAA)

The TAPAA (43 U.S.C. sec. 1651) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system (TAPS) to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and the Fund's revenues are intended to be used to compensate for damages including cleanup, restoration of natural resources, and economic loss, resulting from spills of oil transported through TAPS. Liability of owners and operators is defined, and the fund may seek to recover its expenses from responsible parties. Because of the $100 million ceiling to which the Fund is subject, the fee is suspended for such time as that maximum is maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments to the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1331). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. The fee is collected by the Internal Revenue Service, and may be reduced when the balance in the Fund reaches the $200 million cap. The Fund may be used to compensate for damages, including cleanup, property damage and loss of income and tax revenue, resulting from spills of oil produced on the Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are defined, and the Fund may seek to recover its expenses from responsible parties. Collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 (33 U.S.C. sec. 1502), established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in deepwater port operations. When operational, this fund will be maintained by a $.02 a barrel fee assessed on oil loaded at a deepwater port.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act provides for the regulation and control of the generation, treatment and disposal of hazardous wastes. Permits are required for treatment or storage facilities. The Environmental Protection Agency may sue to require cleanup of an inactive disposal site if the site is posing an imminent and substantial hazard to public health. However, this provision does not provide funds for cleanup of inactive sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

State Statutes

Various State statutes have established funds, and/or rules pertaining to liability, for damages resulting from environmentally hazardous discharges. The Appendix contains a list of States which maintained oil spill liability funds as of 1979.

II. DESCRIPTION OF BILLS

A. H.R. 85—Comprehensive Oil Pollution Liability and Compensation Act[1]

H.R. 85 deals with issues related to the discharge of oil and hazardous chemicals into navigable waters. It would establish a Comprehensive Oil Spill Liability Fund and a separate Pollution Fund for the purpose of providing the funds necessary to expedite the clean-up of, and the compensation for damages resulting from, releases of oil or hazardous substances which may occur in the navigable waters of the United States or the high seas. Regulations issued under this bill would be subject to a one-House veto.

Oil Spill Liability Fund

The Oil Spill Liability Fund would be financed through a fee of not more than $.03 a barrel on oil received at terminals for export from or import into the United States or at refineries. The exact amount of the fee imposed on each barrel of oil would be established by the Secretary of the Treasury in such a manner as to keep the fund balance between $150 million and $200 million. This fund generally would incorporate all the assets and any liabilities of the Trans-Alaska Pipeline Liability Fund, the Offshore Oil Pollution Compensation Fund, and the Deep Water Port Liability Fund. The Secretary of Transportation would be authorized to borrow from the Treasury, subject to appropriation action, if amounts in the fund are inadequate to meet obligations. Further the bill would authorize an appropriation of such revenues as may be necessary for the administrative activities of the fund.

Revenues from the fund would be used to compensate for damages, including cleanup, property damage and loss of income or tax revenue resulting from oil spills. Rules for liability are defined, and the fund may seek to recover its expenses from responsible parties.

Pollution Fund

The ceiling on amounts available to the Pollution Fund established by section 311 of the Federal Water Pollution Control Act would be increased to $100 million. Revenues for the Fund would be collected under a schedule of fees imposed on suppliers of petrochemical feedstocks and certain other hazardous substances. The $100 million ceiling of the Pollution Fund is to be reached by imposing fees on the following categories of substances, but not in excess of the percentage of that ceiling noted after the maximum fee which may be imposed.

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[1] This description refers to H.R. 85 as reported by the Committee on Public Works and Transportation, subsequent to being reported by the Committee on Merchant Marine and Fisheries, whose version of H.R. 85 pertains only to releases of oil, not to hazardous substances. The oil spill provisions of both versions are quite similar.

Category	*Maximum fee*	*Percentage of total fees*
Petrochemical feedstocks	$20 per short ton	40
Specified inorganic feedstocks	$1 per short ton	20
Specified frequently spilled chemicals.	$0.01 per pound/$1 short ton Hw.	20
Specified hazardous substances	$1 per short ton	20

Revenues from the fund would be used to compensate for damages, including cleanup, property damage and loss of income or tax revenue resulting from discharges of hazardous substances. Rules for liability are defined, and the fund may seek to recover its expenses from responsible parties.

Collection of Fees

Both fees would be collected by the Treasury Department. However, only those fees payable to the Pollution Fund would be subject to the normally applicable enforcement powers of the Internal Revenue Service (Subtitle F of the Internal Revenue Code).

Effective Date

The provisions of the bill relating to the Oil Spill Liability Fund and fee generally would be effective 180 days after the date of enactment; the provisions of the bill relating to the Pollution Fund and fee would be effective upon enactment.

B. H.R. 7020—Hazardous Waste Containment Act

Hazardous Waste Response Fund

H.R. 7020 would create a Hazardous Waste Response Fund to address the release of hazardous waste from inactive waste sites to land, air or ground water. The bill would not deal with the release of oil or other pollutants into the navigable waters of the United States. The Fund would be used, to the extent provided in appropriations, to pay for (1) containment or removal of hazardous waste released, or in danger of being released, into the enviroment, (2) emergency assistance to minimize the damage resulting from the release or threatened release, (3) the reimbursement of expenses incurred in the clean up of hazardous waste releases. Rules for liability are defined and the fund may seek to recover its expenses from responsible parties.

The Fund would be constituted from $600 million in fees and appropriations and from recoveries from, and penalties imposed on, persons liable for the release of hazardous wastes. Appropriations to the Fund in the amount of $300 million over 4 years ($50 million in fiscal year 1981) would be authorized. The remaining $300 million ($50 million in 1981) would be raised by the imposition of fees on petrochemical feedstock suppliers, supplies of inorganic elements or compounds, and on refiners and exporters of oil. Generally, no fees would be imposed on feedstocks or inorganic elements or compounds used in the fertilizer production industry for 3 years after enactment. The precise amount of the fee would be determined annually under regulations promulgated by the Administrator of the Environmental Protection Agency (EPA). The fee in the case of petrochemical feedstocks in any year could not exceed the lowest of (1) $10 per short ton, (2) 2 percent of the selling price of such feedstock, (3) the amount necessary to produce a specific amount of revenues, or (4) an amount necessary to produce revenues equal to 60 percent of the amount appropriated to the Fund. The fee imposed on inorganic elements or compounds in any year could not exceed the lowest of (1) $5.00 per ton, (2) 2 percent of the selling price of such elements or compounds, (3) an amount necessary to raise a specified amount of revenues, or (4) an amount equal to 20 percent of appropriations to the Fund. The fee imposed with respect to crude oil could not exceed the lowest of (1) $.03 per barrel, (2) an amount necessary to produce a specified amount of revenue, or (3) an amount equal to 20 percent of appropriations to the Fund.

Collection of Fees

The time and mode for reporting, paying, and collecting the fees imposed under the bill would be established by regulations prescribed by whatever agency or department the President might designate for that purpose. A penalty up to $2,000 per day could be imposed for failure or refusal to pay the fees imposed under the bill.

Effective Date

The fee and other provisions of H.R. 7020 would become effective on October 1, 1980.

The authority of the Administrator to assess and collect fees and carry out other provisions of the bill would expire 5 years after the date of enactment unless reauthorized by the Congress.

III. ADMINISTRATION PROPOSAL

Oil, Hazardous Substances and Hazardous Waste Liability Fund

The Administration's proposal for a comprehensive fund (or "superfund") to compensate for environmental damages from hazardous discharges is substantially embodied in H.R. 4566. The bill would create an "Oil, Hazardous Substances and Hazardous Waste Liability Fund," that would be used, to the extent provided in appropriations, to pay for (1) the containment or removal of oil or specified hazardous substances or wastes released, or in danger of being released, into the environment, (2) emergency assistance to minimize the damage resulting from a release or threatened release, (3) the processing and payment of claims for compensation with respect to clean-up costs incurred by or limited damages suffered by persons and governmental agencies as the result of a release of oil or hazardous substances, and (4) the administrative and personnel costs of the Federal government incident to administration of the proposed program.

The fund would be constituted from $1.625 billion in fees and appropriations (over a 4-year period), from recoveries from, and penalties imposed on, persons liable for releases of oil and hazardous substance, and from amounts presently held in other environmental funds that would be merged into the single fund contemplated in the bill. Appropriations to the fund in the amount of $325 million over 4 years ($50 million in fiscal 1981) would be authorized.

Collection of Fees

The Secretary of the Treasury would be required to impose fees (within specific limits) on oil refiners and exporters, petrochemical feedstock suppliers, and suppliers of inorganic elements and compounds to generate $1.3 billion in revenue over a 4-year period ($200 million in fiscal 1981). The precise amount of the fee with respect to any particular substance would be set by regulations prescribed by the Secretary of the Treasury. Assessment and collection of the fees would be accomplished by the Treasury and the Internal Revenue Service under the same rules as apply in assessment and collection of manufacturers excise taxes.

Effective Date

The fee and other provisions of H.R. 4566 would become effective with the first month beginning on or after the 180th day after enactment and would be the subject of a comprehensive report to Congress within three years of the effective date.

APPENDIX

State Oil Spill Liability Funds

State	Authorizing State statute	Fund name	Method financing	Size of fund
Alaska	Alaska Statutes, Title 22, 46.03.50 et. seq.	Oil Mitigation Coastal Protection Fund Account.	Annual risk charge, penalties, appropriations.	$30 million.
California	California Codes, 13440.	State Water Pollution Cleanup and Abatement Account.	Appropriations, criminal and civil assessments.	No established size.
Florida	Florida Statutes Annotated, 14:376.11.	Florida Coastal Protection Trust.	Excise tax of 2 cents per barrel, plus registration fees, penalties, judgments.	$35 million.
Maine	Maine Revised Statutes Annotated, Title 38, 551.	Maine Coastal Protection Fund.	Annual license fees based on ½ cent per barrel.	$4 million.
Maryland	Maryland Code Annotated, Natural Resources, 8:1411.	Maryland Oil Disaster Containment, Cleanup and Contingency Fund.	Annual fees ranging from $250 to $5,000.	$1 million.
New Jersey	New Jersey Statutes Annotated, C.23: 11a–3.	New Jersey Spill Compensation Fund.	1 cent per barrel	$25 million.

New York	New York Navigation: 180.	New York Environmental Protection and Compensation Fund.	1 cent per barrel fee	$25 million.
North Carolina	North Carolina General Statutes, 143–483.	Oil Pollution Protection Fund.	Penalties and appropriations funds.	No established size.
Oregon	Oregon Revised Statutes, 468.810.	Oil Spillage Control Fund.	All penalties	No established size.
Texas	Texas Code Annotated, Water, 26.265.	Texas Coastal Protection Fund.	Appropriations	$5 million.
Virginia	Virginia Code 62.1–44.34:2.7 (1978 Com. supp.).	Oil Spill Contingency Fund.	Appropriations	No established size.
Washington	Washington Revised Code, 90.48.390.	Coastal Protection Fund.	Civil penalties, fees, charges, and 1 cent per gallon from marine use refund.	No established limit.

Source: Congressional Research Service.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. No. 96–
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HAZARDOUS WASTE CONTAINMENT ACT OF 1980

JUNE 20, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 7020]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is a new title to be added at the end of the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce, and appears in the reported bill in boldface roman type.

WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 7020, THE HAZARDOUS WASTE CONTAINMENT ACT

H.R. 7020, the Hazardous Waste Containment Act, has been considered and reported favorably by the Committee on Interstate and Foreign Commerce (H. Rept. 96–1016, part I). H.R. 7020 then was referred sequentially to the Committee on Ways and Means for consideration of the revenue aspects of this legislation, which properly fall within the jurisdiction of the Committee on Ways and Means. Specifically, the Committee on Ways and Means considered the revenue issues related to the establishment of taxes on crude oil, petrochemical feedstocks, and certain specified inorganic chemicals for use to provide revenues to clean up discharges of oil and hazardous substances in inactive waste sites. As a result of this consideration, the Committee on Ways and Means favorably reports H.R. 7020 with a committee amendment in the form of a new title.

64-200 O

I. SUMMARY

The Ways and Means Committee amendment to H.R. 7020 imposes excise taxes on crude oil, specified petrochemical feedstocks, and specified inorganic substances. These excise taxes are expected to raise $35 million a year from oil, $108 million a year from petrochemical feedstocks, and $36 million a year from inorganic substances. Revenues from these taxes are to be deposited into a "Harzardous Waste Response Trust Fund," the proceeds of which can be used to finance the costs of containing or cleaning up waste from inactive hazardous waste sites which are causing or threatening to cause harm to the public health and environment.

These excise taxes are to be imposed for the period October 1, 1980 through September 30, 1985. Payments out of the Trust Fund are prohibited after September 30, 1985, unless further action is taken by the Congress.

In addition, the committee amendment provides for a study by the Secretary of the Treasury, in consultation with the Environmental Protection Agency, the Department of Commerce and the Office of the United States Trade Representative, on various aspects of the taxes imposed under the amendment. The Secretary of the Treasury is to report to the Congress by January 1, 1985.

II. EXPLANATION OF WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 7020

A. Present Law

Excise taxes

Under present law, excise taxes are imposed upon the manufacture, production, removal, sale, supply, or use of various items or services. In some instances, revenues from these taxes are deposited into specially designated trust funds. Examples of such earmarked excise taxes and designated trust funds include the Black-lung coal tax (Code sec. 4121), which is deposited into the Black Lung Disability Trust Fund, aviation-related taxes (e.g., Code secs. 4261, 4271), which are deposited into the Airport and Airway Trust Fund, highway-related taxes (e.g., Code secs. 4041 and 4081 (fuels), 4071 (tires, etc.)) which are deposited into the Highway Trust Fund and inland waterway taxes (Code sec. 4042) which are deposited into the Inland Waterways Trust Fund.

Under present law, there is no general excise tax imposed with respect to substances, such as crude oil, petrochemical feedstocks, and inorganic chemicals, which may cause environmental pollution or other damage. However, charges (fees) are imposed under present law on oil produced on the Outer Continental Shelf and on Alaskan North Slope oil transported through the Trans-Alaska Pipeline System (TAPS).

Funds

Present law contains no specially designated trust fund, supported by taxes and appropriations, which is intended to provide monies for cleanup of all types of environmentally hazardous releases from inactive waste sites. However, there are various Federal and State funds designed to accomplish these purposes as to specific locations, damages or losses, and certain types of releases, spills, discharges and pollution. Some of these funds, and related provisions, are described below.

Federal Water Pollution Control Act ("Clean Water Act"), Section 311.

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) establishes a $35 million revolving fund maintained by fines, penalties and appropriations of general revenue. The fund may be used for cleanup of releases of oil and designated hazardous substances into navigable waters and restoration of accompanying natural resources. The Act also establishes certain rules pertaining to responsibility for cleanup expenses, and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

Resource Conservation and Recovery Act.

The Resource Conservation and Recovery Act provides for the regulation and control of the generation, treatment and disposal of hazardous wastes. Permits are required for treatment or storage facilities.

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The Environmental Protection Agency may sue to require cleanup of an inactive disposal site if the site is posing an imminent and substantial hazard to public health. However, this provision does not provide funds for cleanup of inactive sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

B. Reasons for Change

The Committee on Ways and Means believes that it is important to establish a readily available source of funds to respond to releases of hazardous waste from inactive waste sites which endanger public health and the environment. The committee recognizes that the United States Government must bear some of the costs incurred for this purpose. However, it also believes that these costs generally should be borne by the party responsible for the waste, and alternatively by the industries which create the items most frequently located in inactive waste sites.

To accomplish these goals, the committee has decided that it is appropriate to impose excise taxes on certain items which may result in environmentally hazardous pollution from inactive waste sites or which are used to produce hazardous material. The committee also has decided that revenues from these taxes should be earmarked for inclusion in a newly constituted trust fund for payment of cleanup costs for hazardous waste sites. Because the precise scope of the hazardous waste site problem and the financial cost of the remedy are not readily ascertainable, the committee has decided to terminate the taxes and spending from the trust fund at the end of September 1985 (fiscal year 1985) so that Congress may reexamine the situation.

C. Explanation of Provisions

1. Environmental excise taxes

a. Petroleum tax (Sec. 211 of the amendment and new secs. 4611–4612 of the Code)

The committee amendment imposes a specific excise tax (the "petroleum tax") of 0.6 cents a barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil. For this purpose, as under existing Treasury regulations, refining is defined as any operation by which the physical or chemical characteristics of crude oil or its products are changed, exclusive of such operations as passing crude oil through separators or placing crude oil in settling tanks.

If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, then the user or exporter of the oil is subject to that tax to the same extent as it would have been imposed had a United States refiner received the oil. The committee amendment defines oil subject to tax as crude oil, including crude oil condensate and natural gasoline, but not other natural gas liquids. Thus, the term crude oil also does not include butane, ethane, or propane recovered from a natural gas stream; butane, however, is taxed as a specified petrochemical feedstock under the chemical tax described below. Moreover, taxable crude oil does not include oil used for extraction purposes on the premises where it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil does not include synthetic petroleum, e.g., shale oil, liquids from coal, tar sands, or biomass, or refined oil.

Petroleum products entered into the United States for consumption, use or warehousing, are subject to a tax of 0.6 cents a barrel. This tax is imposed upon the person who enters such products. Generally, the term petroleum products includes crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products have been produced in, entered into, or exported from the United States, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception for bonded petroleum products.

In the case of areas which are not subject to the general United States customs laws, an "entry" has occurred at any time that such an event would have occurred if the customs laws were applicable to that area. However, an "entry" is deemed not to have occurred in the case of fuel stores on a ship or the casual use of items such as fuel in an sutomibile's gas tank.

In the case of refiners that recover natural gasoline, the gasoline so recovered is treated as received by that refiner at the time it is recovered. If natural gasoline is recovered in a gas separation plant rather than at a refinery, the tax is imposed when the gasoline is received at a refinery or when it is used or exported without passing through a refinery. Thus, a refiner must pay the same tax whether it purchases natural gasoline or wet gas from which it recovers natural gasoline.

The committee amendment also provides that the petroleum tax-is imposed only once (under new Code section 4611) with respect to any petroleum product. Anyone who otherwise is liable for the tax may establish that it already has been imposed with respect to that product.

The committee amendment contains no special administrative or compliance provisions relating to the petroleum tax. Instead, the existing rules relating to excise taxes apply. Thus, the Internal Revenue Service has its full range of administrative and compliance powers available in administering and collecting the tax. Similarly, the penalties contained in existing law apply, as appropriate, to the petroleum tax.

Effective date

The petroleum excise tax imposed by the committee amendment applies for the period October 1, 1980, through September 30, 1985.

b. Chemical tax (Sec. 211 of the amendment and new secs. 4661–4662 of the Code)

The committee amendment imposes specific excise taxes (the "chemical tax") on specified petrochemical feedstocks and on specified inorganic substances. The tax, which is similar to existing excise taxes, is imposed on any taxable chemical sold by the taxpayer, i.e., the manufacturer, producer, or importer of the chemical. If the taxpayer uses a taxable chemical prior to its sale the tax is imposed as if the chemical had been sold.

The chemical tax on specified petrochemical feedstocks is $2.54 a ton. The feedstocks subject to tax are: ethylene, propylene, butylene, butadiene, butane, benzene, toluene, xylene, napthalene, and methane. These feedstocks are subject to the chemical tax regardless of the source from which the feedstock is derived. As a result, feedstocks derived from syhthetic petroleum are subject to the chemical tax.

There is no exemption from the chemical tax for petrochemical feedstocks used as fuel. Because petroleum fuels typically pass through the hands of numerous persons before they are burned by the ultimate consumer, it is unclear how such an exemption could be effectively administered. The cost of documenting ultimate fuel use under such circumstances might well cost more than the taxes saved. The committee amendment does require the Secretary of the Treasury to study the feasibility of providing an exemption for petrochemical feedstocks which are used as fuel.

The tax on specified inorganic substances is $2.33 a ton. The inorganic substances subject to the tax are:

(A) arsenic and the equivalent weight of arsenic in arsenic trioxide;

(B) cadmium;

(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

(D) lead and the equivalent weight of lead in lead oxide;

(E) mercury;

(F) the equivalent weight of barium in barium sulfide;

(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

(H) cobalt;

(I) nickel;

(J) the equivalent weight of tin in stannic chloride and stannous chloride;

(K) chlorine;

(L) the equivalent weight of fluorine in hydrofluoric acid;

(M) bromine;

(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

(O) elemental phosphorus.

In the case of a taxable chemical which is a gas (e.g., methane), the tax is imposed on the number of cubic feet of such gas which is equivalent to 2000 lbs. on the basis of molecular weight.

The committee amendment provides an exemption from the tax for chemicals which are used in producing fertilizer if the use occurs with the taxpayer or with the first or second purchaser of the chemical from the taxpayer. Subsequent purchasers of tax-paid chemicals used in producing fertilizer may obtain refunds of the tax paid on the item used.

The committee amendment also provides that the Secretary of the Treasury is to promulgate regulations necessary to avoid imposition of the chemical tax imposed by this Act more than once upon the same substance. Specifically, a system would be provided such that if a taxable chemical is used to manufacture or produce a second taxable chemical, then a credit against the amount of tax on the second chemical would be permitted for the amount of tax imposed on the first substance.

For purposes of the chemical tax, an importer is anyone who enters taxable chemicals into the United States for consumption, use, or warehousing. For purposes of the chemical tax, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific, and any possession of the United States, as well as the Outer Continental Shelf and any foreign trade zones of the United States. There is no exception for bonded items.

In the case of areas which are not subject to the general United States customs laws, an "entry" has occurred at any time that such an event would have occurred if the customs laws were applicable to that area. However, an "entry" is deemed not to have occurred in the case of fuel stores on a a ship or the casual use of items such as fuel in an automobile's gas tank.

The committee amendment contains no special administrative or compliance provisions relating to the chemical tax. Instead, the existing rules relating to excise taxes apply. Thus, the Internal Revenue Service has its full range of administrative and compliance powers available in administering and collecting the tax. Similarly, the penalties contained in existing law would apply, as appropriate, to the chemical tax.

Effective date

The chemical excise tax imposed by the committee amendment applies for the period October 1, 1980, through September 30, 1985.

2. Trust fund (secs. 212–213 of the amendment)

Establishment of the trust fund

The committee amendment establishes a "Hazardous Waste Response Trust Fund". (hereinafter referred to as the Trust Fund). The Trust Fund consists of any amount that is appropriated or credited to it pursuant to the committee's amendment, or transferred to it under any other provision of the Act. Therefore, the Trust Fund will consist of: (1) excise taxes paid pursuant to the Act (new Code secs. 4611 and 4661), (2) amounts recovered or collected on behalf of the Trust Fund under Title I of the Act, (3) amounts reimbursed to the Trust Fund under section 3041(a)(3) of the Solid Waste Disposal Act, (4) any penalties imposed under the Act, and (5) amounts of general revenue authorized to be appropriated to the Trust Fund. Disbursements from the Trust Fund may not be made (1) for any purpose other than those specified in Title I of the Act, (2) to pay any costs which are incurred with respect to an inactive waste site owned or operated by any agency of the United States, or (3) in excess of ten times the amount of general revenue appropriated to it for that fiscal year. No expenditures may be made from the Trust Fund after September 30, 1985, unless the Trust Fund is extended.

Expenditures from the Trust Fund may be made, to the extent provided in appropriations Acts, only for purposes of emergency response, removal, containment, cleanup, or other action taken under subpart C of part 2 of subtitle C of the Solid Waste Disposal Act, as in effect on the date of enactment of the committee amendment.

The Act authorizes appropriations of general revenues to be made to the Trust Fund in the following amounts: for fiscal year 1981, $50 million, for fiscal year 1982, $75 million, for fiscal year 1983, $75 million, and for fiscal year 1984, $100 million. For fiscal year 1985, the Act authorizes an appropriation of general revenue to the Trust Fund in an amount equal to the sum of any of the appropriations authorized by the Act which have not been appropriated prior to that time.

Administrative provisions and reports

Under the committee amendment, amounts received by the Treasury attributable to the specified excise taxes, penalties, etc., are to be transferred to the Trust Fund at least monthly. Proper adjustments must be made in subsequently transferred amounts to the extent that prior estimates were in excess of or less than the amounts required to be transferred. In addition, the Secretary must report to Congress on the condition of the Trust Fund for each year ending after September 30, 1980. These reports must include a description of the financial condition of the Trust, the results of its operation during the preceding fiscal year, and on its expected fiscal condition and operation during the following five fiscal years.

The Secretary may invest such portion of the Trust Fund as is reasonably determined not to be required to meet current withdrawals. Such investments may be made only in public debt securities. The Trust Fund has no authority to borrow from the general fund of the Treasury or from any other fund.

Effective date

The Trust Fund established by the committee amendment is for the period October 1, 1980 through September 30, 1985.

3. Coordinating provisions (sec. 231 of the amendment)

The committee's amendment contains a number of provisions intended to coordinate its amendment with other provisions of the Act. Generally, the amendment provides that nothing in the Act, or in any provision of the Act (other than in the committee amendment) authorizes the creation of any fund, the payment of moneys out of the Trust Fund created by the committee amendment, or the levy or collection of any fee. In addition, the committee amendment clarifies that its references to named Acts limit the incorporation of all relevant provisions of those Acts to their terms on the date of enactment of the committee amendment, without regard to subsequent amendment or modification.

To the extent not inconsistent with the committee's amendment, any reference in Title I of the Act to a "fund" is deemed to be a reference to the Trust Fund.

4. Study (sec. 241 of the amendment)

The committee amendment requires the Secretary of the Treasury to submit a report to Congress by January 1, 1985, on various aspects of the taxes imposed by the Act. The report is to include the results of a study on the feasibility and desirability of establishing a schedule of taxes which is based on the disposal or generation of hazardous waste, and which would reflect the degree of hazard and risk of harm to the public and the environment posed by the various hazardous wastes.

The study also must examine the impact of the taxes on the balance of trade, and the feasibility and desirability of (1) imposing taxes similar to those established by the Act on substances, such as coal and biomass, which are not taxable under the Act but which might cause disposal problems similar to those caused by the taxed substances, (2) structuring the taxes to promote the recycling, incineration, and neutralization of hazardous waste, and (3) providing a tax exemption for the fuel use of taxable feedstocks.

The study is to be conducted in consulation with the Environmental Protection Agency, the Department of Commerce, and the U.S. Trade Representative.

III. BUDGET EFFECTS OF THE COMMITTEE AMENDMENT

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the the budget of the provisions of the committee's amendment to H.R. 7020.

The excise taxes imposed under the committee's amendment will increase budget receipts by $164 million in fiscal year 1981 and by $179 million per year in fiscal years 1982–1985, as shown in the following table.

ESTIMATED REVENUE EFFECTS FROM EXCISE TAXES ON PETROLEUM AND SPECIFIED CHEMICALS IN H.R. 7020 AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

(Millions of dollars)

	Fiscal years				
	1981	1982	1983	1984	1985
Excise tax on—					
Petroleum	32	35	35	35	35
Petrochemical feedstocks	99	108	108	108	108
Inorganic feedstocks	33	36	36	36	36
Total	164	179	179	179	179

The Treasury Department agrees with this statement.

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 3(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report H.R. 7020, as amended. The bill, as amended by the committee, was ordered favorably reported by a roll call vote of 33 ayes and 0 noes.

B. Other Matters

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the action on H.R. 7020, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was a result of the committee's hearing and deliberation with respect to the proposed fees and Fund included in the "Hazardous Waste Containment Act" as reported by the Committee on Interstate and Foreign Commerce, that the committee concluded that it is appropriate to enact the provisions contained in the bill as amended. The committee held a public hearing on the subject on June 2, 1980, and approved the bill with a committee amendment on June 18, 1980.

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by the committee amendment involve no new budget authority or new or increased tax expenditures.

Consultation with Congressional Budget Officials on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this document) and agrees with the budget estimates.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of the committee amendment.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of the committee amendment is not expected to have a significant inflationary impact on prices and costs in the operation of the national economy.

The committee amendment imposes excise taxes on crude oil (0.6 cents a barrel), specified petrochemical feedstocks ($2.54 a ton), and specified inorganic substances ($2.33 a ton). The revenues from these taxes are to be deposited into a newly established Hazardous Waste Response Trust Fund to finance the costs of containing or cleaning up waste from inactive hazardous waste sites which are causing or threatening to cause harm to the environment.

Since these excise taxes are deductible for income tax purposes, the net impact on overall prices in the economy should be minimal. The increased costs attributable to the excise taxes will be small, and will be offset in savings to the nation's environment and health from the clearning up of hazardous wastes provided for under the Trust Fund.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

CHAPTER 31.	Special fuels.
CHAPTER 32.	Manufacturers excise taxes.
CHAPTER 33.	Facilities and services.
CHAPTER 34.	Policies issued by foreign insurers.
CHAPTER 35.	Taxes on wagering.
CHAPTER 36.	Certain other excise taxes.
CHAPTER 37.	Sugar.
CHAPTER 38.	*Environmental taxes.*

* * * * * * *

Chapter 38—Environmental Taxes

Subchapter A. Tax on petroleum.
Subchapter B. Tax on certain chemicals.
Subchapter A—Tax on Petroleum.
Sec. 4611. Imposition of tax.
Sec. 4612. Definitions and special rules.

SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax of 0.6 cents a barrel on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.6 cents a barrel is hereby imposed on such crude oil.

(2) Exception for use on premises where produced.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum products.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) Tax on certain uses or exports.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1985.

SEC. 4612. DEFINITIONS AND SPECIAL RULES.

(a) Definitions.—For purposes of this subchapter—

(1) Crude oil.—The term "crude oil" includes crude oil condensates and natural gasoline.

(2) Domestic crude oil.—The term "domestic crude oil" means any crude oil produced from a well located in the United States.

(3) Petroleum product.—The term "petroleum product" includes crude oil.

(4) United States.—

(A) In general.—The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) United States includes continental shelf areas.—The principles of section 638 shall apply for purposes of the term "United States".

(C) United States includes foreign trade zones.—The term "United States" includes any foreign trade zone of the United States.

(5) United States refinery.—The term "United States refinery" means any facility in the United States at which crude oil is refined.

(6) Refineries which produce natural gasoline.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

(7) Premises.—The term "premises" has the same meaning as when used for purposes of determining gross income from the property under section 613.

(8) Barrel.—The term "barrel" means 42 United States gallons.

(9) Fractional part of barrel.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

(b) Only 1 Tax Imposed With Respect to Any Product.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

Subchapter B—Tax on Certain Chemicals

Sec. 4661. Imposition of tax.
Sec. 4662. Definitions and special rules.

SEC. 4661. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

(1) $2.54 a ton in the case of specified petrochemical feedstocks, or

(2) $2.33 a ton in the case of specified inorganic substances.

(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

SEC. 4662. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term "specified petrochemical feedstock" means any of the following substances from whatever source derived:

Ethylene
Propylene
Butylene
Butadiene
Butane
Benzene
Toluene
Xylene
Napthalene
Methane

(3) SPECIFIED INORGANIC SUBSTANCE.—The term "specified inorganic substance" means any of the following substances:

(A) arsenic and the equivalent weight of arsenic in arsenic trioxide;

(B) cadmium;

(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

(D) lead and the equivalent weight of lead in lead oxide;

(E) mercury;

(F) the equivalent weight of barium in barium sulfide;

(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

(H) cobalt;

(I) nickel;

(J) the equivalent weight of tin in stannic chloride and stannous chloride;

(K) chlorine;

(L) the equivalent weight of fluorine in hydrofluoric acid;

(M) bromine

(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

(O) elemental phosphorus.

(4) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).

(5) IMPORTER.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(6) TON.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) EXCEPTION FOR USE IN PRODUCTION OF FERTILIZER.—

(1) IN GENERAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance—

(A) used in a qualified use by the manufacturer, producer, or importer,

(B) sold for use by the purchaser in a qualified use, or

(C) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

(2) QUALIFIED USE.—For purposes of this subsection, the term "qualified use" means any use in the manufacture or production of a fertilizer.

(3) REGISTRATION.—The provisions of section 4222 (relating to registration) may be extended to, and made applicable with respect to, the exemption provided by paragraph (1) to the extent provided by regulations prescribed by the Secretary.

(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4661 in the same manner as if such chemical were sold by him.

(d) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

(1) a tax under section 4661 was paid with respect to any taxable chemical, and

(2) such chemical was used by any person in the manufacture or production of—

(A) any other substance the sale of which by such person would be taxable under such section, or

(B) a fertilizer,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which paragraph (2)(A) applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.

Union Calendar No. 693

96TH CONGRESS
2D SESSION

H. R. 7020

[Report No. 96–1016, Parts I and II]

To amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 2, 1980

Mr. Florio introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

May 16, 1980

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

May 20, 1980

The Committee of the Whole House on the State of the Union discharged; and referred to the Committee on Ways and Means for a period ending not later than June 20, 1980, for consideration of such portions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(v), rule X

June 20, 1980

Reported from the Committee on Ways and Means with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in boldface roman]

[For text of introduced bill, see p. 3 of this volume]

A BILL

To amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of throughout the United States in a manner which has resulted

in, and which may in the future result in, dangerous releases;

(2) the exact location of many such hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) releases of hazardous waste can cause harm to public health and the environment;

(5) modern disposal practices using the existing state of the art of technology permit containment of dangerous releases from hazardous waste sites; and

(6) a systematic method of funding for purposes of identifying, containing, and taking other remedial actions with respect to inactive hazardous waste sites is necessary to protect public health and the environment in a cost effective manner.

GOALS

SEC. 4. The goals of this legislation are to—

(1) provide for a State-by-State inventory of inactive hazardous waste disposal sites and the condition of such sites;

(2) evaluate such sites, and set priorities among the sites, based on the danger they present;

(3) establish a program to assure the containment of dangerous releases from inactive hazardous waste sites;

(4) accelerate the elimination of the presence of any unsafe hazardous waste disposal sites; and

(5) provide a systematic method of funding for the identification of inactive hazardous waste disposal sites, the evaluation of such sites, and for the containment and other remedial action with respect to such sites to assure protection of the public health and the environment in a cost effective manner.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in

this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Petrochemical feedstock' means the following: liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals: ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, and methane other than that used to make ammonia.

"(3) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(4)(A) 'Supply' means, with respect to petrochemical feedstocks or inorganic elements and compounds, the production, manufacture, or importation of such feedstocks or compounds.

"(B) 'Supplier', with respect to petrochemical feedstocks or inorganic elements and compounds, means any person who supplies such feedstocks or compounds and who either—

"(i) provides, through sale or any other means, the feedstocks or elements and compounds to other persons, or

"(ii) uses the feedstocks or elements and compounds himself.

"(5) 'Threatened release' means a condition or situation where there exists a substantial likelihood that a release into the environment from or at an inactive site is imminent.

For purposes of this part, the terms 'inorganic elements and compounds', 'crude oil', and 'refiner' shall have the meanings prescribed by the Administrator, by rule.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous

Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by

any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is car-

rying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Containment Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a

substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at an inactive hazardous waste site presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with

such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that an inactive hazardous waste site presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain, and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer *with the Administrator with respect to any action proposed to be included in such order and with respect to the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include (i) assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, (ii) restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and (iii) assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action. This paragraph shall apply only to those sites which have been listed by the Administrator under section 3032(b) as top priority sites.*

"(3)(A) Upon receipt of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste into the environment from or at an

inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or the environment, and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in, or order, the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or the environment due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accomodate the hazardous waste transferred to that facility under paragraph (1) or (2)

as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2),

and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

"(8) Anyone ordered or authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and the environment at the site under consideration,

"(2) the availability of amounts from the fund established under subpart D to respond to other sites

which present or may present a threat to public health or the environment; and

"(3) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) Interim Sites.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and finan-

cial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence with respect to the sites to which this subsection applies. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release into the environment' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share

of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and the environment at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health, safety, or the environment.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

"(f) WAGES.—(1) All laborers and mechanics employed by contractors or subcontractors in the performance of

construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Administrator shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

"(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"Sec. 3042. (a) Plan.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out under this part;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions pursuant to this part shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites undertaken pursuant to section 3041. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Insti-

tute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into for purposes of remedial action under such section 3041 shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"STATE CONTRIBUTION

"SEC. 3043. (a)(1) Not more than 90 per centum of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 10 per centum of such total costs shall be paid by the participating State in which the inactive hazardous waste site concerned is located. No amount may be expended by the Administrator for any such action unless the State in which such hazardous waste is located has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources,

"(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which the Administrator has taken any action under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January

1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $500,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment

Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's 10 per centum share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts collected as fees under section 3052,

"(B) an amount equal to all amounts recovered by the United States under subpart F,

"(C) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(D) any penalties assessed under this part, and

"(E) amounts authorized to be appropriated to the fund under paragraph (3).

"(2) The total amount deposited in the Fund which is derived from the fees collected under section 3052 and from appropriations under paragraph (3) shall not exceed—

"(A) $100,000,000 for the fiscal year 1981,

"(B) $150,000,000 for the fiscal year 1982,

"(C) $150,000,000 for the fiscal year 1983, and

"(D) $200,000,000 for the fiscal year 1984.

"(3) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $50,000,000,

"(B) 1982, $75,000,000,

"(C) 1983, $75,000,000, and

"(D) 1984, $100,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for emergency response, removal, containment, cleanup, and other action carried out under subpart C, including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for

that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"FEES

"SEC. 3052. (a) IMPOSITION OF FEE.—(1) Under regulations promulgated by the Administrator, there shall be imposed on—

"(A) each supplier of petrochemical feedstocks, a fee for each pound of petrochemical feedstocks supplied to any other person or used by such supplier,

"(B) each supplier of inorganic elements and compounds, a fee for each pound of inorganic elements or compounds supplied to any other person or used by such supplier, and

"(C) the receipt by any refiner of crude oil and the export by any person of crude oil, a fee per barrel of crude oil received or exported.

Such fees shall be imposed annually and on the basis of a schedule of rates established by the Administrator at such level as he annually estimates as necessary to recover the amounts specified in subsection (b). The schedule shall be *modified annually by the Administrator in accordance with this section.*

"(2) The inorganic elements and compounds subject to the fee imposed under this subsection are—

"(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, mercury, the equivalent weight of barium in barium sulfide, antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide, cobalt, nickel, the equivalent weight of tin in stannic chloride and stannous chloride;

"(B) chlorine, the equivalent weight of fluorine in hydrofluoric acid and bromine;

"(C) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid;

"(D) elemental phosphorus; and

"(E) such other inorganic elements and compounds as the Administrator may by rule provide, based upon information available to him as a result of listing or characterizing hazardous wastes or of implementing this Act.

"(3) Any determination by the Administrator under paragraph (3)(E) to subject any other inorganic element or compound to the fee imposed under this subsection shall be based upon three or more of the following—

"(A) A finding by the Administrator that the raw material from which such element or compound is derived, including intermediates and products of such raw material, is hazardous in more than one form.

"(B) A finding by the Administrator that the generation of the raw material, intermediates, or products, from which such element or compound is derived results in hazardous waste.

"(C) A finding by the Administrator that the raw material from which the element or compound is derived is produced in large amounts.

"(D) A finding by the Administrator that the raw material from which the element or compound is derived is capable of increasing the hazard potential of other raw materials.

"(4) No fee shall be imposed under this subsection on any quantity of feedstock or element or compound with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (A) or (B) of paragraph (1). Except for a fee imposed under such subparagraph (A) on the sale or use of petrochemical feedstocks

derived from any crude oil, no fee may be imposed under paragraph (1) on any crude oil with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (C) of such paragraph (1).

"(6) For a period of three years after the initial date on which fees are imposed under this section, no fee shall be imposed under this section with respect to any petrochemical feedstock or inorganic element or compound which is used in the fertilizer production industry. If the Administrator determines that the use by such industry of any such feedstock, element, or compound has required expenditures for remedial action under this part, the Administrator may, after such three year period, impose a fee under this section with respect to such feedstocks, elements, or compounds used by such industry. The amount of such fee so imposed shall bear the same ratio to the total fees imposed under this section as the expenditures for remedial action under this part resulting from the use by the fertilizer industry of such feedstocks, elements, and compounds bears to the total expenditures for remedial action under this part.

"(b) AMOUNT OF FEE.—(1) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of petrochemical feedstocks shall not exceed the lesser of—

"(A) 0.5 cent per pound of petrochemical feedstock supplied or used,

"(B) 2 per centum of the price in the case of petrochemical feedstock when sold at arms length by the supplier,

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $30,000,000,

"(ii) 1982, $45,000,000,

"(iii) 1983, $45,000,000, and

"(iv) 1984, $60,000,000, or

"(D) such amount as is necessary to produce revenues equal to 60 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(2) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of inorganic elements or compounds shall not exceed the lesser of—

"(A) $5 per ton of inorganic elements or compounds supplied or used,

"(B) 2 per centum of the price in the case of inorganic elements or compounds when sold at arms length by the supplier,

"(D) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(D) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(3) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the receipt of crude oil shall not exceed the lesser of—

"(A) 3 cents per barrel of crude oil received,

"(B) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(C) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(4) In order to provide an economic incentive for the recycling and reuse of any feedstock, element, or compound referred to in subsection (a)(1) (A) or (B), the Administrator may reduce the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound in proportion to the extent that he determines any portion of that feedstock, element, or compound to be—

"(A) removed from the waste stream of a production process and recycled in such production process, reintroduced into products, or used as a source of energy, or

"(B) derived from recycled material.

No reduction under this paragraph with respect to any feedstock, element, or compound may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound.

"(c) COLLECTION OF FEES.—(1) The time and manner of payment of the fee shall be specified, the reporting and submission of information necessary to collect the fee shall be required, and the collection of the fees shall be carried out, by such department or agency of the United States as the President shall designate in such manner as such department or agency shall, by rule, establish.

"(2) Any person required to pay any fee or comply with any other requirement imposed under regulations promulgat-

ed under subsection (a) who fails or refuses to pay such fee, together with interest thereon (at prevailing rates as determined by the Secretary of the Treasury) in accordance with regulations under this section shall, in addition to liability for any such fee, pay a civil penalty of $2,000 for each day during which such failure or refusal continues.

"(d) JUDICIAL REVIEW OF FEE REGULATIONS.— No regulation of the Administrator imposing any fee under this section, and no modification of any such regulation, may be stayed by any court pending completion of judicial proceedings for the review of such regulation or modification.

"(e) EFFECTIVE DATE.—The fees imposed under regulations pursuant to this section shall apply to—

"(1) petrochemical feedstocks and inorganic elements and compounds, supplied or used,

"(2) crude oil received

on or after October 1, 1980.

"(f) REPORT.—The Administrator, in consultation with the Secretary of the Treasury and other appropriate Federal departments, agencies, and instrumentalities, and with representative of affected industries, shall devise a fee schedule based upon the disposal or generation of hazardous waste. Such schedule shall, to the maximum extent practicable, be based upon—

"(1) the degree of hazard to public health and the environment posed by the various categories of hazardous wastes; and

"(2) the risk of harm to public health and the environment posed by such wastes so as to accurately and equitably reflect the costs of such risks in the production stream from which such waste is generated;

and shall minimize administrative, regulatory, and reporting burdens by relying on existing or readily obtainable information. Within one year from the date of the enactment of this subsection, the Administrator shall submit to the appropriate committees of Congress a preliminary report identifying the issues involved in carrying out this subsection. Within two years after such date of enactment, the Administrator shall submit to such committees a final report setting forth the fee schedule devised pursuant to this subsection. There is authorized to be appropriated to carry out this subsection not more than $2,000,000 to remain available until expended.

"Subpart E—Enforcement

"ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"(b) CRIMINAL PENALTY.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Liability for Hazardous Waste Release

"LIABILITY FOR RELEASES

"SEC. 3071. (a) LIABILITY.—(1) Except for a release, or threatened release, of hazardous waste which the defendant establishes to be caused solely by—

"(A) an act of God or an act of war,

"(B) negligence on the part of the Government of the United States,

"(C) an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, or

"(D) any combination of the foregoing

where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs described in subsection (b), any person who caused *or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release.*

"(2)(A) If a generator or transporter of hazardous waste establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste generated or transported by him, such generator or transporter shall be liable under this subsection only for such portion. If the owner or operator of any inactive hazardous waste site establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste which was treated, stored, or disposed of in a period during which he owned or operated the site, such owner or operator shall be liable under this section only for such portion.

"(B) To the extent apportionment is not established under subparagraph (A), the court shall apportion the liability, to the maximum extent practicable, among the parties based upon evidence presented by the parties as to their contributions.

"(C) Following any apportionment under this paragraph, no person shall be required to pay in excess of his apportioned share of the total costs described in subsection (b).

"(b) Costs.—The costs for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste are the costs of any removal, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c)) and any costs incurred by a State or local government with respect to such release.

"(c) To Whom Liable.—The liability for costs described in subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c), the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in subsection (b)(1), shall bring an action under this section for the recovery of such costs against the person liable promptly following his determination of the amount of any such costs.

"(d) Liability Under Other Authority of Law.—Nothing in this section shall affect the liability of any person under any other authority of law for any release, or threatened release, of hazardous waste, except that the amount recovered by such person under any other authority of law for any costs to which this section applies shall reduce

the amount which such person may recover under this section for such costs.

"(e) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability of any other person, including a guarantor, by reason of subrogation, indemnification agreement or otherwise, to a person held liable under this section.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—Hazardous Waste Response Authority

"Sec. 3041. Emergency response.
"Sec. 3042. National Hazardous Waste Response Plan.

"Sec. 3043. State contribution.

"Subpart D—Hazardous Waste Response Fund

"Sec. 3051. Establishment of Fund.
"Sec. 3052. Fees.

"Subpart E—Prohibitions and Enforcement

"Sec. 3061. Enforcement.

"Subpart F—Liability for Hazardous Waste Release

"Sec. 3071. Liability for releases.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or in-

trastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States

Senate not later than one year after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $1,000,000 to carry out the study required under this section.

STUDY OF ADEQUACY OF FUNDING

SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or the environment, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act;

(4) whether the fees, appropriations, and penalties established under the amendments made by this Act are sufficent and equitable; and

(5) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, fees, *State participation, liability and liability limits, and financial responsibility provisions.*

SUNSET PROVISIONS

SEC. 8. Unless reauthorized by Congress, the authority of the Administrator to assess and collect fees, to inventory and clean up or to order any action regarding an inactive hazardous waste disposal site, or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

LIMITATION ON AUTHORIZATIONS

SEC. 9. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

TITLE II—HAZARDOUS WASTE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Waste Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms

of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"Subchapter A. Tax on petroleum.
"Subchapter B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.6 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.6 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX. The amount of the tax imposed by subsection (a) shall be—

"(1) $2.54 a ton in the case of specified petrochemical feedstocks, or

"(2) $2.33 a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term 'specified petrochemical feedstock' means any of the following substances from whatever source derived: Ethylene, propylene, butylene, butadiene, butane, benzene, toluene, xylene, napthalene, and methane.

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic and the equivalent weight of arsenic trioxide;

"(B) cadmium;

"(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

"(D) lead and the equivalent weight of lead in lead oxide;

"(E) mercury;

"(F) the equivalent weight of barium in barium sulfide;

"(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

"(H) cobalt;

"(I) nickel;

"(J) the equivalent weight of tin in stannic chloride and stannous chloride;

"(K) chlorine;

"(L) the equivalent weight of fluorine in hydrofluoric acid;

"(M) bromine;

"(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

"(O) elemental phosphorus.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTION FOR USE IN PRODUCTION OF FERTILIZER.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance—

"(A) used in a qualified use by the manufacturer, producer, or importer,

"(B) sold for use by the purchaser in a qualified use, or

"(C) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(2) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) REGISTRATION.—The provisions of section 4222 (relating to registration) may be extended to, and made applicable with respect to, the exemption provided by paragraph (1) to the extent provided by regulations prescribed by the Secretary.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4661 in the same manner as if such chemical were sold by him.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4661 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of—

"(A) any other substance the sale of which by such person would be taxable under such section, or

"(B) a fertilizer,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which paragraph (2)(A) applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"Chapter 38. Environmental taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS WASTE REPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Waste Response Trust Fund" (hereinafter in this subtitle referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, PENALTIES, ETC.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered by the United States under subpart F of part 2 of subtitle C of the Solid Waste Disposal Act,

(C) any amount reimbursed to the Trust Fund as provided in subsection (a)(3) of section 3041 of the Solid Waste Disposal Act, and

(D) any penalties assessed under part 2 of subtitle C of the Solid Waste Disposal Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Trust Fund for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $75,000,000,

(C) 1983, $75,000,000,

(D) 1984, $100,000,000, and

(E) 1985, an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Trust Fund shall be available, to the extent provided in appropriations Acts, only for purposes of making expenditures for emergency response, removal, containment, cleanup, and

other action taken under subpart C of part 2 of subtitle C of the Solid Waste Disposal Act (including reimbursement of excess costs pursuant to section 3041(c) of such Act) as in effect on the date of the enactment of this Act. No amount in the Trust Fund may be used to pay any part of the costs referred to in the preceding sentence which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

(2) LIMITATION ON AMOUNT EXPENDED OUT OF TRUST FUND FOR ANY FISCAL YEAR.—The amount expended out of the Trust Fund for any fiscal year shall not exceed 10 times the amount appropriated to the Trust Fund for such fiscal year under the authority contained in subsection (b)(2).

(d) TERMINATION.—No amount may be paid out of the Trust Fund after September 30, 1985.

SEC. 222. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into con-

sideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

(c) NO AUTHORITY TO BORROW.—Nothing in any provision of law shall be construed to authorize the Trust Fund to borrow any money from the general fund of the Treasury or from any other fund established in the Treasury.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 231. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of the Trust Fund created by this title, or

(3) the levy or collection of any fee.

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title, any reference to a fund in this Act (or in any amendment made by this

Act) other than this title shall be deemed to be a reference to the Hazardous Waste Reponse Trust Fund established by this title.

Subtitle D—Study

SEC. 241. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study on—

(1) the feasibility and desirability of—

(A) a schedule of taxes—

(i) which is based on the disposal or generation of hazardous waste, and

(ii) which would reflect the degree of hazard and risk of harm to the public health and the environment posed by the various hazardous wastes,

(B) taxes imposed on substances not taxed by the amendments made by this title such as coal and biomass, and

(C) taxes which are designed to promote the recycling, incineration, and neutralization of hazardous waste,

(2) an exemption from the taxes imposed by section 4661 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) the impact of the taxes imposed by sections 4611 and 4661 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

[From the Congressional Record, Sept. 18, 1980, pp. H9143-H9144]

HOUSE DEBATE ON H.R. 7020

LEGISLATIVE PROGRAM

(Mr. Rhodes asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I take this time to inquire of the distinguished majority leader as to the program for the balance of the evening.

Mr. WRIGHT. Would the distinguished minority leader yield?

Mr. RHODES. I yield.

Mr. WRIGHT. I believe there has been somewhat general, if in some cases reluctant agreement, to a schedule of action which will let us make progress on the two bills which involve oil spills and chemical wastes, H.R. 85 and H.R. 7020. The plan would be to adopt both rules tonight and to conclude the general debate only on H.R. 85 tonight; to begin tomorrow with the general debate on H.R. 7020, stopping at that point and returning to the consideration of H.R. 85 under the 5-minute rule and hoping to conclude that bill by 3 o'clock tomorrow, arising in any event at 3 o'clock tomorrow. That is the present plan.

It has been discussed with Members on both sides and spokesmen for the various committees involved. I believe it is the best arrangement we can come to for the day.

Mr. RHODES. It is my understanding that H.R. 7020 would not be read for amendment under any circumstances until possibly some time next week.

Mr. WRIGHT. That is correct; it would not be read for amendment tomorrow nor this evening.

Mr. RHODES. General debate on H.R. 7020 would not start tonight?

Mr. WRIGHT. General debate on H.R. 7020 would not begin tonight. We would hope to adopt both rules and keep them somewhat in tandem, with H.R. 85 moving first, trying to complete general debate on H.R. 85 tonight, not getting into any 5-minute rule tonight, and then doing general debate first tomorrow on H.R. 7020, then returning to H.R. 85 attempting to conclude all action on H.R. 85 under the 5-minute rule and final passage of that bill tomorrow, if that can be done prior to the 3 o'clock adjournment time tomorrow. It would not be the plan to move into the 5-minute rule on H.R. 7020 this week.

Mr. RHODES. I thank the gentleman.

The SPEAKER pro tempore (Mr. BRADEMAS). Without objection, the Chair recognizes the gentleman from Texas (Mr. Wright).

There was no objection.

Mr. LONG of Maryland. Mr. Speaker, would the gentleman yield?

Mr. WRIGHT. I yield to the gentleman from Maryland.

Mr. LONG of Maryland. Mr. Speaker, I thank the gentleman for yielding.

Could I ask what the plans are for the International Monetary Fund appropriation, which had been scheduled for tonight, but had been taken off the calendar?

Mr. WRIGHT. We hope to reach that Tuesday.

Mr. LONG of Maryland. Not until Tuesday?

Mr. WRIGHT. Well, the agreement is that there will not be any votes on Monday. We are going to go through the suspensions Monday and try to conclude any debates that can be concluded without incurring substantive votes, putting off any substantive votes that would be required from action taken Monday until Tuesday.

Mr. LONG of Maryland. Could the majority leader tell us what time on Tuesday it would come; would it come the first thing or later on in the day?

Mr. WRIGHT. I guess I had better not try to answer that question at this time, because there are so many clamorous demands from so many deserving sources, each in some ways more deserving than all others.

Mr. LONG of Maryland. I get the message.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. WRIGHT. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, I would respectfully suggest that since we will have completed general debate on H.R. 7020, a logical progression might be on Tuesday for the first bill to be H.R. 7020, to go forward under the 5-minute rule.

Mr. WRIGHT. It might be.

Mr. FLORIO. I thank the gentleman.

[From the Congressional Record, Sept. 18, 1980, pp. H9228-H9231]

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 773 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

House Calendar No. 388

96TH CONGRESS
2D SESSION

H. RES. 773

[Report No. 96–1262]

Providing for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 27, 1980

Mr. LONG of Louisiana, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Providing for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and each section of said substitute shall be considered as having been read. It shall be in order to consider the amendment to said substitute recommended by the Committee on Ways and Means now printed in the bill in boldface roman, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. No amendment to said amendment shall be in order except pro forma amendments for the purpose of debate and the following amendments which shall not be amendable except by pro forma amendments: (1) the amendments recommended by the Committee on Ways and Means; (2) the amendment printed on page H7926 in the Congressional Record of August 25, 1980, by Representative Ullman of Oregon; and (3) the amendment to be printed in the Congressional Record of September 5, 1980, by and if offered by, Representative Florio of New Jersey. Upon the adoption of the amendment recommended by the Committee on Ways and Means to the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce made in order as an original text by this resolution, no further amendment to the bill shall be in order. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute made in order as an original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

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The **Speaker** pro tempore (Mr. **Brademas**). The gentleman from Louisiana (Mr. Long) is recognized for 1 hour.

Mr. **Long** of Louisiana. Mr. Speaker. I yield the usual 30 minutes to the gentleman from Maryland (Mr. Bauman) pending which I yield myself such time as I may consume.

(Mr. Long of Louisiana asked and was given permission to revise and extend his remarks.)

Mr. **Long** of Louisiana. Mr. Speaker, House Resolution 773 provides for the consideration of the bill H.R. 7020, a part of the vital superfund legislation to clean up our environment. The bill amends the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment. The bill establishes a hazardous waste response fund to be financed through the joint participation of industry fees and general revenues. It also sets forth prohibitions and requirements concerning inactive hazardous waste sites and provides for liability of persons responsible for releases of hazardous waste at such sites.

Mr. Speaker, H.R. 7020 is legislation of urgent importance. On September 11, a report from the Surgeon General of the United States warned us that toxic chemicals seeping into the environment pose a "major and growing public health problem" that will plague our Nation for years. The extent of this problem is just now becoming evident and will take years to fully assess. It is believed that toxic chemicals are adding significantly to disease in the United States. A research study by the Library of Congress finds that many hazardous chemicals and pesticides "are so long-lasting and so pervasive in the environment that virtually the entire human population of the world" is affected. The findings have been characterized as the tip of an iceberg: We do not yet know what lies behind this frightful evidence which is just now coming into view.

House Resolution 773 dispenses with the first reading of the bill, and provides for 2 hours of general debate. One hour shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, and 1 hour shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule makes in order for purposes of amendment, the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce. The Commerce substitute is now printed in the bill, and each section shall be considered as having been read for amendment. All germane amendments to the Commerce substitute shall be in order during the consideration of this portion of the legislation. The rule waives points of order under section 402(a) of the Budget Act against the bill. This section of the Budget Act requires new budget authority to be reported by May 15 of the preceding fiscal year for which it is effective. The Commerce substitute cures this technical violation of the Budget Act.

As reported by the Committee on Interstate and Foreign Commerce, the bill directly addresses the cleanup of inactive and abandoned hazardous waste sites. It provides for a systematic inventory of all hazardous waste sites. It establishes priorities among the sites based on the relative danger. [Sec. 105(8)] It authorizes the Government to respond appropriately to protect the public health and the environment from the dangers posed by such sites. [Sec. 104] The Commerce Committee version of the bill establishes a $600 million fund, comprised equally of general revenues and industry fees to finance actions taken by the Administrator of the Environmental Protection Agency in providing emergency assistance and containment. [Secs. 211 and 221] The legislation also establishes a Federal cause of action in strict liability to enable the EPA Administrator to pursue rapid recovery of the costs incurred from cleanup from these who are liable. [Sec. 107]

There is little controversy about the need for legislation to facilitate the cleanup and containment of abandoned hazardous waste sites. There is, however, a difference of opinion about the way to finance the cleanup. The Ways and Means Committee reported a different version of the legislation; a substitute, which is now printed in the bill in boldface roman type. Ways and Means recommended a fund of $1.2 billion, twice the amount of the Commerce recommendation, composed three-fourths from industry excise taxes and one-fourth from general revenues. [Secs. 211 and 221] Because of the great disparity between the versions reported by the two committees, the Committee on Rules is recommending that Mr. Florio, on behalf of Commerce, have an opportunity to offer an amendment to the Ways and Means version in addition to the amendments requested by Ways and Means.

[Mr. Florio's amendment appears on page H8382 of the CONGRESSIONAL RECORD of September 5, p. 311 of volume 3.]

His amendment gives the House a third alternative and represents a compromise between the two positions. The Florio amendment proposes a fund of $1 billion composed of two-thirds industry fees and one-third general revenues.

This rule grants a waiver of the germaneness rule (clause 7, rule XVI) against the Ways and Means substitute. In addition to pro forma amendments for the purposes of debate only, the following are the only amendments in order to the Ways and Means substitute, and these amendments are not amendable (except by pro forma amendments): First, amendments recommended by the Committee on Ways and Means; second, an amendment printed on page H7926 in the CONGRESSIONAL RECORD of August 25 which exempts hazardous substances used as fuel from the excise tax; and, third, the Florio amendment as previously described.

Once the Ways and Means version of these amendments have been considered, no further amendments are in order.

The rule provides for one motion to recommit with or without instructions.

Mr. Speaker, I think this is a fair rule. I urge the adoption of House Resolution 773 so that the House may proceed to the consideration of this crucial environmental legislation, H.R. 7020.

Mr. BAUMAN. Mr. Speaker, I yield myself 30 minutes.

Mr. Speaker, I would say that the gentleman from Louisiana has adequately explained this rule at great length, perhaps greater than needed. I would also comment that the rule from the parliamentary point of view is a mongrelization. It is the usual waiving of the Budget Act, waiving of the preparing of appropriate legislation. It is a closed rule on a bill dealing with Ways and Means. In other words, it is the way we usually run the railroad here in the House of Representatives.

Mr. Speaker, this rule provides for the consideration of H.R. 7020, the Hazardous Waste Containment Act, more commonly known as "superfund."

The rule contains waivers of points of order and restrictions on amendments.

First, there is a waiver of the Budget Act requirement that authorization bills be reported by May 15 before the beginning of the fiscal year the authorization takes effect. The waiver is required because the introduced version of the bill includes authorization for a study which would take effect this fiscal year. Since the bill was not reported by May 15, 1979, the waiver is included. The Commerce Committee has advised that they have a committee amendment making any authorizations in the bill effective on October 1, 1980, and this, if adopted, will cure the Budget Act violation.

The Commerce Committee substitute is in order as an original bill for the purpose of amendment, and the rule provides that a Ways and Means amendment to the substitute will also be in order. Points of order against the Ways and Means amendment are waived because of failure to comply with the germaneness rule and the rule prohibiting appropriations on legislation.

The germaneness waiver is necessary because the Ways and Means amendment changes the tax code, while the Commerce substitute does not.

The waiver for an appropriation on legislation is necessary because the bill appropriates certain tax receipts to this trust fund.

In addition, the rule provides that no amendments to the Ways and Means amendment will be in order except pro forma amendments for the purpose of debate, and three specified amendments which will not be amendable except by pro forma amendments.

The three amendments are:

First: Ways and Means Committee amendments;

Second: An Ullman amendment, printed in the RECORD, and;

Third: A Florio amendment printed in the RECORD.

Mr. Speaker, the purpose of the bill made in order by this rule is to provide for a national inventory of inactive hazardous waste sites and to establish a program for response action to protect public health and the environment.

The bill would provide authority to take emergency containment actions with respect to hazardous waste sites and to establish a hazardous waste response fund.

Mr. **BROYHILL**. Mr. Speaker, will the gentleman yield?

Mr. **BAUMAN**. I yield to the gentleman from North Carolina.

Mr. **BROYHILL**. I appreciate the gentleman's yielding. I ask for this time to get clarification of this rule and the rights for amendment. As I understand this rule, title II has been added to H.R. 7020 by the Committee on Ways and Means, and that is found on page 55 of the bill and is in roman type. The language under title II, that part of the bill, it is my understanding is not subject to the amendment except a substitute that may be offered by the gentleman from New Jersey (Mr. Florio). My question is, is there the right to amend any other parts of the bill? There are nine sections which precede title II, and I assume, or my interpretation of the rule is, that amendments to any parts of those sections would be in order under the normal rule of the House; is that correct?

Mr. **Bauman**. Under the normal rules of the House, and under this rule the remainder of the bill, particularly the Commerce Committee section, is in fact amended.

Mr. **Broyhill**. I thank the gentleman.

Mr. **Long** of Louisiana. Mr. Speaker, I yield 5 minutes to the gentleman from Connecticut (Mr. Moffett).

(Mr. Moffett asked and was given permission to revise and extend his remarks.)

Mr. **Moffett**. Mr. Speaker, I know the hour is late, and I will not take my 5 minutes, but I want to voice and reflect some sadness over the fact that we are not going farther with this bill this week. There is no doubt that it is controversial. There is no doubt that there are some who would like to kill this bill. It is a very sad thing, because I do not think there is anyone in this House who would wish upon communities the kind of problems associated with hazardous waste. The interesting thing is politically there is no Republican or Democractic position on this in the sense of how it affects all of us.

I know, having conducted hearings on the subcommittee I am privileged to chair, I have had as many people on this side of the aisle as I have had on my own side of the aisle, as many people from the South as from the North, come and say "I have got this problem in my very district," so we have an interest in getting this bill through.

On the heels of the debate on the continuing resolution, where so many of our friends on this side said we should finish the work of the House, and we should stay here and do business, and so forth—and they made some very persuasive points—I hope they will assist us in getting this bill up as soon as possible next week under the 5-minute rule so we can complete consideration of it and get together with the Senate on it.

Mr. Speaker, there is one thing we can all agree on, I think. If the energy shortage of the 1970's was important and critical, the hazardous waste problem of the 1980's and 1990's is going to be just as dramatic. I congratulate the Committee on Rules for this rule. It combines fairness with an expeditious kind of consideration of this matter. There are 30,000 to 50,000 waste sites scattered throughout this country, and as we sit here at this late hour, I hope we will remember that there are people in those communities begging and pleading with us to try and deal with this matter.

I know there is a lot of money involved in this bill. Some of my colleagues are very concerned about that. I think we all are, but the fact is 10 years from now when we really begin to see the magnitude of this, unfortunately there are going to be so many people come back and say that was chicken feed compared to what the problem really needs. I hate to say that, but I think many Members on both sides know that is a fact. It is chicken feed compared to what is really going to be needed to address this problem. It could be $50 billion by all estimates, and we are fighting here over who pays, and that is important debate to have. But let us not lose sight of the real problem and that is addressing this in the most expeditious fashion.

I thank the gentleman for yielding this time to me.

Mr. LONG of Louisiana. I thank the gentleman for his remarks. I yield 5 minutes to the gentleman from Tennessee (Mr. Gore).

(Mr. Gore asked and was given permission to revise and extend his remarks.)

Mr. GORE. Mr. Speaker, I will be very brief. I would like to first ask my colleagues to support this rule. It is a good rule.

Second, this legislation is good legislation. The Oversight and Investigations Subcommittee has held 18 hearings on this problem, both in this Congress and in the last. It is an enormous problem, and the solution embodied in this bill is well targeted on the problem.

Third, however, my colleagues on both sides of the aisle ought to be aware, particularly in light of the development this evening, that there is a determined effort to kill this legislation in both Houses of Congress.

I would hope that those of you who have constituents who are concerned about this program will resist the entreaties that will come your way during this weekend. I hope that you will resist the efforts to contribute to delay in the coming week.

This bill represents a bipartisan effort. Indeed, the minority members on the Commerce Subcommittee that has handled this legislation have contributed in a positive way to the legislation.

Many of my colleagues on this side of the aisle have helped out in investigating the problem and in coming up with the solution. So, I do not want it to be said at the end of this Congress that there is no clearer example of the difference between Democrats and Republicans than in the way this legislation has been approached. I have heard it said in the past that when a problem comes up and on one side of the problem is a narrow special interest and on the other side of the problem is the public interest, then it is the Democratic Party that identifies itself with the public interest and it is the Republican Party that takes it upon itself to speak up for the narrow special interest and say, "Wait, wait, we want a delay. We cannot move quite this fast. There are problems. It is going to take time to solve these problems. The public interest will have to be given a back seat. We will put it on the back burner. If there is not enough time here, then maybe in the next Congress we will take it up."

☐ 2020

I hope that does not happen, but if that is the result in this Congress then I will identify myself with those who say, yes: Look at this bill, look at this legislation, look at the way the two major parties in this country have approached the problem. Look at the way the Democrats have come up with a constructive solution for the problem, have worked on it until even responsible members of the industry now support this bill. And then look what happened when some of the irresponsible parties in the industry sent out telegrams and called up long distance to say, "Wait a minute. Do what you can to delay it. Hold it up. We do not want to tackle the problem of hazardous waste this year. The public is going to have to wait because we may not have time to work out all of these long difficulties."

I sincerely hope that it will not come to that, my colleagues, and I do not believe it will. I am convinced that a strong majority of the Republicans in this House are in support of this legislation and I am convinced that they will join with the majority in resisting efforts to delay it. I encourage everyone to support this rule and then join with us to beat back the effort to try to kill this bill by delaying it to death this year.

Mr. BAUMAN. Mr. Speaker, I yield myself 1 minute.

I would say, Mr. Speaker, I do not know what turned the gentleman from Tennessee on at this hour but now that he has denounced the entire party, I hope, too, there might be somebody over here who might agree with the gentleman. I have problems with hazardous waste in my district and other hazardous wastes like recent speeches by the President about Governor Reagan, but we will debate all those next week and I hope we reach some conclusion that will be fairminded. Our party is noted for that, especially the gentleman from Maryland.

Mr. Speaker, I yield 1 minute to the gentleman from Delaware (Mr. Evans).

Mr. EVANS of Delaware. Mr. Speaker, I would like to respond briefly to the gentleman from Tennessee. First of all, I have certainly enjoyed working with all those members of the Committee on Merchant Marine and Fisheries, particularly the gentleman from New York (Mr. Biaggi). As a Republican, I was an original cosponsor of the Oil Spill Liability and Compensation Act. We do have potential oil spill problems in the State of Delaware. Oil spills hurt everyone and they certainly do not distinguish between Republicans and Democrats. I am very sorry that anyone from Tennessee—since I was born in Tennessee—or Delaware or anywhere else would unfairly introduce the question of partisanship. I just think that we need to reduce some of the invectives in the Presidental campaign, the congressional campaigns and in this House of Representatives. We need to proceed with business, and I do believe very sincerely that there is a bipartisan effort as far as H.R. 85 is concerned and as far as H.R. 7020 is concerned. I am very pleased to join in bipartisan support of H.R. 7020.

Mr. BAUMAN. Mr. Speaker, I knew this would happen.

I yield 5 minutes to the gentleman from Louisiana (Mr. Moore).

Mr. MOORE. Mr. Speaker, I thank the gentleman for yielding.

I was in my office preparing to watch the debate and do other work. I heard the two preceding speakers, the gentleman from Tennessee and the gentleman from Connecticut. They brought up points I thought had to be answered.

I come from the State of Louisiana which has chemical plants, a great number in my district. We also have some tremendous chemical storage sites which have to be cleaned up in my State and one in my district. These bills came before my committee. I supported them then and I intend to support them on the House floor.

Mr. Speaker, the reason I objected to H.R. 7020 being debated tonight is because by the time we got to it, it was going to be at 10 o'clock or 11 o'clock. I think every Member knows, with no votes being able to be cast or called at that point there would be nobody here to hear the debate, an important debate on an important bill. The things that concern me are this matter of funding and who is going to control that funding and who is going to determine which sites have to be cleaned up. Those are things that demand a responsible debate and those are things to which a substitute will be offered.

I do not think 10 o'clock at night with nobody here is the time to debate that, and second, I do not think a Friday afternoon when everybody is trying to get on the planes is the time to listen to that debate and vote responsibly on it.

I assure the two gentleman whom I mentioned a moment ago, I am very much in favor of early consideration next week and I intend to vote for both of those bills, but I think it is not right to cast those sort of aspersions. There is no plot, it is a matter of concern for reasonable consideration of two important bills, especially H.R. 7020.

I thank the gentleman for yielding.

Mr. **Bauman**. Mr. Speaker, the honor of the minority being admirably upheld, I yield back the balance of my time.

Mr. **Long** of Louisiana. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

The **Speaker** pro tempore. Without objection, the previous question is ordered on the resolution.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table

[From the Congressional Record, Sept. 19, 1980, pp. H9153-H9178]

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. **Florio**. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The **Speaker** pro tempore (Mr. Brademas). The question is on the motion offered by the gentleman from New Jersey (Mr. Florio).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. **Ashbrook**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 307, nays 1, answered "present" 1, not voting 123, as follows:

[Roll No. 566]

YEAS—307

Akaka
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broyhill
Burgener
Burlison
Burton, Phillip
Butler
Campbell
Carney
Carr
Carter
Cheney
Clay
Clinger
Coelho
Coleman
Collins (Ill.)
Collins (Tex.)
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Forsythe
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Harkin
Harris
Hawkins
Heckler
Hefner
Hightower
Hollenbeck
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lee
Lehman
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren

McCormack
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rahall
Railsback
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Trible
Udall
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yatron
Young, Fla.
Young, Mo.

NAYS—1

Holt

ANSWERED "PRESENT"—1

Ottinger

NOT VOTING—123

Abdnor
Addabbo
Alexander
Ambro
Anderson, Ill.
Anthony
Applegate
Atkinson
Barnard
Beard, Tenn.
Bethune
Bonior
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Byron
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Conyers
Corman
Cotter
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard

Dixon
Dodd
Donnelly
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ford, Mich.
Ford, Tenn.
Fountain
Gephardt
Giaimo
Gibbons
Gingrich
Glickman
Grassley
Gray
Hanley
Hansen
Harsha
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Hutto
Ireland
Jacobs
Jenrette
Johnson, Colo.
Kelly
Latta
Leach, La.
Lederer
Leland
Lent
Lloyd
Luken
McClory
McCloskey
McDade
McDonald
McEwen
McKinney
Mathis
Mattox
Mavroules
Mazzoli
Mica
Mitchell, Md.
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Pashayan
Pepper
Pritchard
Quillen
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Satterfield
Simon
Skelton
Stark
Stockman
Symms
Thomas
Traxler
Ullman
Van Deerlin
Vento
Waxman
Weaver
Williams, Ohio
Wilson, Bob
Wright
Wydler
Yates
Young, Alaska
Zablocki
Zeferetti

□ 1030

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7020, with Mr. Natcher in the chair.

The Clerk read the title of the bill.

The Chairman. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from New Jersey (Mr. Florio) will be recognized for 30 minutes; the gentleman from Illinois (Mr. Madigan) will be recognized for 30 minutes; the gentleman from Illinois (Mr. Rostenkowski) will be recognized for 30 minutes; and the gentleman from New York (Mr. Conable) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. Florio).

Mr. Florio. Mr. Chairman, I yield myself such time as I may consume.

(Mr. Florio asked and was given permission to revise and extend his remarks.)

Mr. Florio. Mr. Chairman, improper hazardous waste management is the most serious environmental problem facing our Nation today. The bill we are about to consider—H.R. 7020—will, upon enactment, make significant strides in correcting this problem.

For over a year now, the subcommittee on transportation and commerce, which I chair, has been considering the problem of hazardous waste disposal sites which are releasing dangerous substances into the environment and seriously endangering the public health.

Our committee held extensive hearings on this subject. We do not believe it is an exaggeration to say it is the number one environmental challenge facing us in this decade.

Hundreds, possibly thousands, of neglected, leaking disposal sites presently dot the country—threatening to release their lethal contents, despoiling water supplies and menacing public health. Preventive measures are needed immediately to stop further releases. Remedial action is urgently needed at those sites which are presently causing serious problems.

The Environmental Protection Agency is currently investigating over 7,000 disposal sites as suspected or known hazards to public health or the environment. And these are but a fraction of the total number of sites, of the 7,000-plus sites under investigation, most have not yet been fully characterized. However, EPA has already identified 397 sites as needing remedial actions to protect public health and the environment.

Hazardous waste releases from inactive and abandoned disposal sites include highly toxic organic chemicals, pesticides, heavy metals, acids, radioactive substances, explosives, and flammable materials. These wastes are capable of producing the full range of toxic effects in humans. In addition to acute poisoning, such chronic responses as cancer, mutations, and promotion of miscarriages and birth defects are also produced. Death and personal injury from fires or explosions are another threat.

A recently released Surgeon General's report on the health effects of toxic pollution finds that exposure to toxic chemicals is a major health concern. The report concludes that the control of the future introduction of chemicals will not in itself be sufficient to address this major health problem. Serious efforts will have to be made to provide for the identification and cleanup of existing sources of chemical contamination.

It was only a little over 2 years ago that the dangers posed by chemical dump sites began to arouse the national consciousness. The Nation awoke to the abandoned dump site problem with the tragedy of Love Canal. Unfortunately we learned that Love Canal was not a unique event. Other hazardous waste incidents came to light.

In Toone, Tenn., Grey, Maine, and Jackson Township, N.J., people drank water poisoned by releases of hazardous waste from inactive chemical dump sites. A "Valley of the Drums" was created in Kentucky by the indiscriminate dumping of 17,000 industrial waste drums, representing the ultimate obscenity in desecrating land and endangering public safety. Water supplies of 300,000 people in eastern Iowa are currently threatened by leaking arsenic, benzene, chloroform, and other hazardous wastes from a single inactive dump site.

Just last April, fire raged through the Chemical Control site in Elizabeth, N.J. The fire burned 15,000-20,000 improperly stored barrels of hazardous waste, spewing black smoke over a 15-mile radius of the New York Metropolitan area. Schools on Staten Island and Elizabeth were closed and residents advised to stay indoors.

A major catastrophe was only averted because weather conditions were favorable for dispersal of the fumes and the high energy content of the drums resulted in relatively complete combustion. Otherwise millions of people could have been exposed to the extremely toxic fumes of a black cloud hovering over New York City.

☐ 1040

Documentation of the serious and far-reaching nature of the problem goes well beyond the few most publicized incidents. Using only existing data, EPA has documented damages at 250 known hazardous chemical dumpsites. These include 27 sites at which injuries to the health of surrounding residents have been found. Leakage from 32 of these sites has caused the closing of 452 drinking water wells which supplied water to hundreds of thousands of people. Chemical contamination of groundwater has been found at 130 of these sites.

I am including at this point in the RECORD a full range of horror stories from sites around the Nation.

[Dollars amounts in millions]

Site and location: Problem	Case filed [1]	Estimated cost [2]
La Marque, Tex.: Chemical dump in floodplain (abandoned)	No	$2–$4.0
Kin Buc, Inc., Edison, N.J.: Dumped chemical wastes	Yes	[3] 25.0
Woodland Park, Mich.: Train derailment chemical contamination	No	3–5.0
Gratiot Co. landfill, Michigan: PBB contamination	No	4–8.5
Montague, Mich.: Barrels dumped	No	15.0
Jacksonville, Ark.: Pesticides dumped, buried	No	[4] 4.0
Occidental site, Lathrop, Calif.: DBCP contamination	No	15.0
Gary, Ind., site: Wastes stored in open fields	No	5.0
Subtotal (19 sites) (using low estimate)		314.5

[1] Federal hazardous waste enforcement case.

[2] Of clean up, or where case filed, amount requested either for bond or in damages.

[3] Requested.

[4] Plus.

SITES NOT INCLUDED IN SUBTOTAL (ESTIMATES VARY TOO GREATLY)

[Dollars amounts in millions]

Site: Problem	Suit filed	Estimated cost
St. Louis Park, Minn.: Creosote	No	$20–$200
Velisicol, Hardeman, Tenn.: Dump site	No	6–165
Saltville, Va.: Mercury	No	4–32
Neville Island, Pittsburgh, Pa.: Dump site	No	7–24
Globe, Ark.: Asbestos	No	1–5
Hudson River, N.Y.: PCB in sediments	No	25–204

In addition, the Library of Congress compiled a catalog of toxic chemical damages. The catalog was based on a search of existing literature conducted on relatively short notice. It cannot be considered a complete inventory by any measure, but it is a factual catalog of some damages. It turned up 1,363 well closings as a result of chemical contamination. Of these 242 were from organic chemicals, 619 were from poisonous heavy metals, and 185 from industrial waste disposal of unknown origin.

In my own State of New Jersey, State officials have already closed 500 individual domestic wells and 13 wells operated by municipalities and water supply companies.

The price tag to secure public health and environmental threats from inactive sites, clean up leaking hazardous wastes, and prevent future releases will be large. EPA estimates the average expected remedial action costs to be about $3 million per site. And, at the more serious sites, the average may be closer to $10 million. Although costs will vary significantly from site to site, one principle will operate at all sites—the sooner action is taken, the lower the costs will be. Early containment simply means less to clean up.

An example is illustrative. At Love Canal, the Government has spent on the order of $30 million for response measures. In addition, damage suits amount to billions of dollars in claims. By contrast, the site could have been secured properly at the time of disposal for an estimated $3 million.

Existing statutes are inadequate to cope with the inactive waste site problem. Both funds and emergency response authority to clean up problem chemical dumps are lacking under current law.

The inescapable conclusion of all this—even to the casual observer—is that there is a serious, widespread problem and no existing authority to solve the problem.

The bill we are considering now—H.R. 7020—is designed to provide the solution to the problem of dangerous, chemical dump sites. The goals of the legislation are to eliminate unsafe inactive hazardous waste sites and to remove hazardous waste threats to public health and the environment in a cost effective manner.

The bill has four basic elements to achieve its goals. First, it establishes an information gathering and analysis system. This system will enable Federal and State governments to characterize inactive site problems more accurately and develop priorities for investigation and response.

Owners of inactive sites would notify States of the presence of sites and the nature of the wastes buried there **[Sec. 103(c)]**. States would develop inactive site inventories and priority lists using the notification data. From State priority lists, the Federal Government would be able to develop a national priority list for action **[Sec. 105(8)]**.

Second, the bill establishes Federal authority to respond to hazardous waste emergencies and clean up leaking inactive dump sites. Federal response actions are limited to cases where the responsible party either cannot be found or does not take the proper actions. In cases where States wished to conduct response actions and had the capability to do so, resources from the fund would be required to be directed to them **[Sec. 104]**.

Third, the bill creates a response fund to pay for inactive site cleanup. Under the version of the bill reported by the Commerce Committee, a $600 million fund would be established over a 4-year period. The fund would be financed equally from two sources. Half would come from general revenues; half would come from an industry fee placed on oil, petrochemical feedstocks and toxic inorganic chemicals [Secs. 211 and 221].

The Ways and Means Committee amendment to H.R. 7020, which I will support, would double the size of the fund to $1.2 billion and increase the industry share to 75 percent. As I mentioned earlier, EPA has currently cataloged 397 sites which require remedial actions. At an estimated $3 million per site, there are already enough sites which need cleanup to justify the authorization of a $1.2 billion fund.

It is wholly appropriate and equitable for the industries which have benefited most directly from cheap, inadequate disposal practices, and which have generated the wastes which imposed the risks on society to contribute a substantial portion of the response costs. Both the Commerce Committee and Ways and Means Committee agree on this principle.

Fourth, the bill makes those persons who cause or contribute to hazardous waste releases at inactive sites strictly liable for cleanup costs. Such persons would also be jointly and severally liable unless they could show that they were responsible for only a portion of the cleanup costs [Sec. 107].

The liability provision accomplishes three objectives. It assures that the costs of chemical poison releases are borne by those responsible for the releases. It creates a strong incentive both for prevention of releases and voluntary cleanup of releases by responsible parties. Finally, it replenishes the fund so that additional emergencies may be responded to and additional sites cleaned up, if necessary.

The path this legislation has traveled has been a long and tortuous one, one marked by controversies at every turn. In particular, the funding components of the bill have been especially controversial. As a result, these provisions have received the closest scrutiny. The industry fee or tax system has been very carefully crafted. It achieves a balance between equity to those paying the fee or tax, administrative simplicity, an effort to minimize economic impacts. Therefore, I can tell you with confidence that the imposition of these costs on industry will not have adverse impacts [Sec. 211].

The economic impact of the bill reported by the Commerce Committee is minimal. Resulting price increases would not produce production deadlines or employment impacts, and would have a negligible effect on chemical sales.

If the Ways and Means amendment is adopted, the conclusions reached about the economic impacts of these price rises are not substantial differences. Throughout the development of this legislation, industry has not presented evidence that this industry fee or tax would cause any significant economic dislocation.

I am pleased to report that H.R. 7020 enjoys a wide range of support from many sectors of our society. Key industry groups support the bill as reported by the Commerce Committee. These include the chemical industry, as well as mining, paper, textile, and steel interests. Especially important to note is that the chemical industry, which would be responsible for the lion's share of the industry contribution, is even willing to support this legislation.

The bill is also supported by State and local governments, organized labor, and the environmental community, additionally, I am inserting in the Record a list of the Members who have expressed their support for the bill. In fact, it is difficult to think of a constituency which does not support the bill.

The list follows:

Mr. Harold C. Hollenbeck (N.J.).
Mr. Norman E. D'Amours (N.H.).
Mr. Edwin B. Forsythe (N.J.).
Mr. Joe Moakley (Mass.).
Mr. Michael D. Barnes (Md.).
Mr. Fortney H. Stark (Calif.).
Mr. Henry J. Nowak (N.Y.).
Mr. John J. LaFalce (N.Y.).
Mr. Paul Findley (Ill.).
Mr. Anthony C. Beilenson (Calif.).
Mr. Thomas J. Downey (N.Y.).
Mr. Edward J. Markey (Mass.).
Mr. William J. Hughes (N.J.).
Mr. Bruce F. Vento (Minn.).
Mr. Richard L. Ottinger (N.Y.).
Mr. Brian J. Donnelly (Mass.).
Mr. Parren J. Mitchell (Md.).
Mr. Phillip Burton (Calif.).
Mr. Vic Fazio (Calif.).
Mr. Bob Edgar (Pa.).
Mr. Gus Yatron (Pa.).
Mr. Mike Lowry (Wash.).
Mr. Lester L. Wolff (N.Y.).
Mr. Peter W. Rodino, Jr. (N.J.).
Ms. Millicent Fenwick (N.J.).
Mr. Robert A. Roe (N.J.).
Mr. Andrew Maguire (N.J.).
Mr. Doug Walgren (Pa.).
Mr. Lionel Van Deerlin (Calif.).
Mr. Matthew F. McHugh (N.Y.).
Mr. Edward P. Boland (Mass.).
Mr. Robert Garcia (N.Y.).
Mr. James M. Jeffords (Vt.).
Mr. Austin J. Murphy (Pa.).
Mr. David E. Bonior (Mich.).
Mr. Henry A. Waxman (Calif.).
Mr. Frank J. Guarini (N.J.).
Mr. William H. Gray, III (Pa.).
Mr. Louis Stokes (Ohio).
Mr. Claude Pepper (Fla.).
Mr. John D. Dingell (Mich.).
Mr. Fernand J. St Germain (R.I.).
Mr. Edward P. Beard (R.I.).
Mr. Harold L. Volkmer (Mo.).
Mr. James A. Courter (N.J.).
Mr. William F. Clinger, Jr. (Pa.).

Therefore, I urge your support for this bill. We have two tasks before us then. The first is resisting any weakening amendments to the bill. There simply is no reason for them. The second is enacting the legislation in a timely manner. The health and well-being of the American people cannot afford anything else.

● Mr. Staggers. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. This legislation addresses a genuine environmental crisis unfolding around our Nation today—the serious adverse health and environmental consequences of past improper and unsafe hazardous waste disposal practices. As we are only too well aware, the consequences of these practices are of growing magnitude and concern in our society.

The tragic human health effects and environmental contamination, particularly of groundwaters, resulting from indifferent, negligent and reckless chemical waste disposal practices have become all too evident in many areas of our country. The glare of national publicity has been focused on the disaster at Love Canal. Scores of other toxic waste disposal incidents and hazards have alarmed the public and elevated the awareness of public officials to the national proportions of the problem.

The Environmental Protection Agency estimates that in 1980 some 57 million metric tons of hazardous waste will be generated and as much as 90 percent of this may be disposed of in an environmentally unsound fashion.

Nationwide, although estimates vary widely, as many as 50,000 abandoned and inactive sites are believed to contain toxic chemical wastes, of which up to 2,000 may pose serious health hazards.

One particularly disturbing threat posed by some sites is to groundwater. EPA data on surface impoundments of chemical wastes indicate that many of these sites are inadequate to prevent wastes from leaking into the ground where they may contaminate subsurface waters. In a number of instances, chemical contamination of groundwater has rendered it unfit for human consumption as drinking water.

Fortunately, prospects for improvement of our ability to handle toxic wastes safely are on the horizon. Existing law addressing hazardous waste problems, the Resource Conservation and Recovery Act of 1976, established a cradle-to-grave regulatory regime to govern prospectively the handling and disposal of chemical waste generated as a byproduct of industrial and commercial processes. Final regulations under that act have not yet been fully promulgated by EPA.

However, EPA has promulgated regulations implementing the manifest system required under the law, which would track, for the first time, the movement of hazardous wastes through final disposal. Final standards for disposal facilities should be promulgated by the end of this year. Enforcement of the manifest system and facility standards will represent a giant step toward preventing and assuring safe handling of hazardous waste and recurrence of unsafe and past disposal practices that have resulted in environmental disasters.

Presently, however, there are inadequate statutory authorities to cope with these unfortunate legacies of the past. Although existing law does provide authority and some funding for Federal cleanup of oil and chemical spills into navigable waters, no parallel authority exists for cleanup of leaking chemical dump sites creating land-based and groundwater hazards. Existing law authorizes the EPA Administrator to go to court to restrain activities which are contributing to the hazard, but does not authorize cleanup action or provide for an assured source of funding for such action if persons responsible for the hazard cannot be located, are insolvent, or refuse to take remedial action.

There is a clear and compelling need for comprehensive legislation to fill these gaps in existing law. H.R. 7020 represents such an approach. It was overwhelmingly approved by the Committee on Interstate and Foreign Commerce and deserves the support of every Member of this body.

H.R. 7020 contains a number of essential elements. First the bill provides for a systematic national inventory of inactive sites to be undertaken by the EPA Administrator with strong input from the States. The inventory will provide the basis for the establishment of cleanup priorities among the sites on the basis of the seriousness of hazards posed to human health and the environment [Secs. 103(c) and 105(8)].

Second, the bill requires present and, in some cases, past owners of sites which pose a health or environmental hazard to monitor the sites for releases of hazardous waste into the environment. If a dangerous release occurs, the owner is required to notify EPA and appropriate State and local authorities. Appropriate remedial actions would then be pursued depending on the nature and extent of the hazard and in accordance with the standards governing the new environmental response authorities created by the bill.

Third, the bill provides the Administrator of the Environmental Protection Agency with necessary environmental response authorities to provide emergency assistance, containment, and cleanup action when an inactive hazardous waste site poses a health or environmental hazard and persons responsible for creating that hazard or permitting it to continue to exist cannot be located, are insolvent, or refuse to take appropriate remedial action [Sec. 104].

These new response authorities fill a gap in existing law. Response actions taken by the Administrator and financed out of a newly created hazardous waste response fund are circumscribed by cost-effectiveness considerations and State cost-sharing requirements. Ultimately, response actions will have to conform to a new national hazardous waste response plan, similar to the national contingency plan in effect under the Clean Water Act [Sec. 105].

Fourth, H.R. 7020 establishes a hazardous waste response fund to finance environmental response action by the Administrator. This fund is to be drawn from both Federal appropriations and industry-based fees. Shared responsibility for financing of the fund recognizes that many segments of our industrial society, and particularly the chemical industry, have benefited from cheap, and all too often, unsafe hazardous waste disposal practices and should make a major contribution toward dealing with the consequences of these practices. It also represents an acknowledgement that while certain members of these industries have been negligent and even reckless in disposing of their wastes, not all companies have acted in an irresponsible fashion; that we as a society have benefited by the scientific and technological advances that have occurred in these high-growth industries; and that to a degree the problem is societal in nature and calls for a commitment from the Federal Government as well as from the industrial sector [Secs. 211 and 221].

Finally, the bill establishes a liability regime that will enable the EPA Administrator to pursue recovery of moneys expended for emergency assistance, containment and cleanup from persons responsible for the problems requiring the Administrator to incur these costs. H.R. 7020 provides a Federal cause of action for the Administrator against such persons. The issues of liability were perhaps the most difficult confronting the committee in fashioning this legislation. In many instances, it will be difficult to determine precisely what the responsibilities of a generator or transporter of hazardous waste or the owner or operator of the hazardous waste disposal site should have been and what a particular defendant's portion of cleanup costs should be [Sec. 107].

The committee bill provides that defendants who caused or contributed to hazardous waste situations necessitating response action by the Administrator shall be strictly, jointly and severally liable for the costs of such action. Certain defenses and exceptions to this general rule of strict, joint and several liability, which take into account the uniqueness of the factual circumstances and of questions of causation frequently surrounding these situations, are provided for defendants who can prove that they took all reasonable precautions in their activities with respect to hazardous waste and that only a portion of total costs of cleanup were attributable to their activities. The liability provisions will enable the Administrator to rapidly recover moneys expended for cleanup and serve as an incentive to potentially liable persons to ferret out and address hazardous waste problems with which they may be associated.

Mr. Chairman, H.R. 7020 represents the product of considerable time and effort by the Committee on Interstate and Foreign Commerce over two Congresses. The Ways and Means Committee has also contributed to the development of this legislation. Both committees have overwhelmingly recommended favorable action by the House. This legislation deserves the support of every Member of this body, and I urge adoption of the bill.●

Mr. Carter. Mr. Chairman, as we begin debate on H.R. 7020, the Hazardous Waste Containment Act of 1980, I urge my colleagues, in considering a complicated response to a complicated problem, to miss the forest for the trees.

The "superfund" proposal, as it is popularly known, addresses the serious consequences resulting from the indiscriminate dumping of lethal chemical and industrial wastes; a problem we are only now discovering may have been with us since the dawn of the industrial age.

The waste disposal problem has been brought to our attention on several occasions: Valley of the Drums, in Kentucky; Love Canal, in New York; and Chemical Control Corp., in New Jersey. I have long believed that the problem of the dumping sites, as shown by these dramatic illustrations, poses a tremendous threat to the people of our country.

Smaller scale attempts have been made before to ease some of the effects of the improper disposal of hazardous waste. During consideration of the Safe Drinking Water amendments of 1977, I included an authorization of $8 million with the intention of cleaning up the Valley of the Drums site in Kentucky. Unfortunately, this sum was never appropriated.

H.R. 7020 presents a balanced and comprehensive approach to cleaning up the hundreds of existing dangerous dumping sites in cases where the culprit is known, as well as instances where the persons or entities responsible for the dumping cannot be found.

Much has been made, in the creation of this bill, of the issues it raises. Many have spoken of liability and the various concepts of law that determine it. Others have spoken of expenses, and the cost of preserving the health of our citizens.

The issue, however, is greater than a fine point of law, or a bottom line dollar amount. It is the issue of responsibility.

The Hazardous Waste Containment Act of 1980 encourages those who create this polluting waste, whether an individual, a corporation, or an entire industry, to take the responsibility to insure that waste generated will be disposed of in a safe, secure, and lasting manner. I commend this bill and endorse it heartily.

☐ 1050

Mr. Madigan. Mr. Chairman, I yield myself such time as I may consume.

(Mr. Madigan asked and was given permission to revise and extend his remarks.)

Mr. Madigan. Mr. Chairman, I rise in support of H.R. 7020 and I would like to say at the outset and in response to some remarks that I understand were made on the floor of the House last night that H.R. 7020 is not a majority party proposal. The bill that is before us now is a compromise that was drafted by the gentleman from New Jersey (Mr. Florio) and myself in the Commerce Committee when the majority party proposal failed to receive enough support so as to be able to move ahead.

This compromise essentially represented in H.R. 7020 was reported from the Commerce Committee, my recollection is by a vote of 21 to 3, with substantial support from the minority party.

So I want to express my regrets that anyone would represent the minority party in debate on the floor of the House as being opposed to doing something about this problem.

I would like at this moment to yield to the gentleman from New Jersey (Mr. Florio) and ask the gentleman if I have correctly represented the minority involvement in this issue thus far.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for yielding and would just say that the support on the one hand and the opposition on the other hand has been presented in a very bipartisan way; the opposition much to my regret and embarrassment on occasion; but the gentleman is correct. He has been helpful and he and many of the Members of the minority on the Commerce Committee have been extremely helpful. That is not universally the case.

Mr. GORE. Mr. Chairman, will the gentleman yield to me on that point?

Mr. MADIGAN. Yes. I will be happy to yield.

Mr. GORE. I had a feeling that the gentleman might have been making reference to some remarks I made last night. Since the gentleman was not here, I wanted to have them clarified exactly.

I said in my remarks last night, and I repeat today, that the minority members of the Subcommittee on Commerce that has handled this bill have contributed in a productive way to reaching a responsible solution for this problem. I said that last night and I am happy to repeat it here again today and also to repeat my belief that a strong majority of Members on both sides of the aisle in this House support this legislation and want to see it enacted.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for his comments.

Mr. Chairman, I rise in support of H.R. 7020.

Mr. Chairman, I am sure that many Members have found, as I have found during my service in Congress, that it is extremely difficult to develop legislation dealing with environmental concerns. It is unfortunate that we are often hampered by the attitude of those interest groups that are most actively involved in the development of this legislation. It is also unfortunate that the process often takes a "good guy" versus "bad guy" tone and that those who profess great concerns about the state of our environment tend to take an all-or-nothing approach to legislation.

During the 1970's, when the Congress was considering and creating environmental legislation, we all became increasingly aware of the dangers posed by the movement of hazardous waste in our society. The Congress provided through the Resource Conservation and Recovery Act a regulatory mechanism to insure the proper disposal of hazardous waste and to end the negligent practices of the past.

However, as many of us on the Commerce Committee recognized early on, there was definitely a gap in existing law in dealing with abandoned or "orphan" dump sites.

I want to take this opportunity to point out that the minority members of the Commerce Committee were willing early last year to support legislation dealing with this gap in existing law. We wanted to see legislation passed on so that we would not have wasted an entire year before providing a means to address this problem of abandoned hazardous waste sites. The minority of the Commerce Committee was ready last year to support the creation of a fund of $600 million that would have been funded by fees raised by the oil and chemical industry **[Sec. 221]**. It is unfortunate that in the closing hours of this session of Congress we still have not been able to establish a framework for legislation to deal with the cleaning up of these abandoned toxic waste sites.

I am sure that the Members are aware that this session of Congress was inundated by many proposals for "superfunds," "ultrafunds," and other assorted funds to address various environmental problems. Many of these proposals were extremely broad and attempted to create new concepts of environmental law and toxic tort law. I have been concerned from the beginning that many proponents of this environmental legislation would bog the Congress down by insisting on new "zero release" environmental concepts and punitive and unreasonable liability provisions. The guiding philosophy behind these various legislative proposals was summed up by one of its principal architects at the Department of Justice who said, "Government is perfectly prepared to punish the innocent for the sins of the guilty." With so little time remaining in this session, it is essential that we avoid these unnecessary controversies.

Mr. Chairman, with little over two weeks remaining in this session, the Senate has not yet completed committee action on similar legislation and the House will not complete floor action until next week. I would hope that the Senators who know the need for legislation this year, and those in the administration who want legislation this year, would not recognize that in order to get a bill, we should be satisfied with establishing a framework to deal with the problem this year and in future years we can fine tune this important effort.

The issue, Mr. Chairman, of the fee has not been the stumbling block to developing a responsible bill. The stumbling block has been the punitive approach that many proponents insist that this legislation follow. Advocates of this legislation have at times been more concerned with creating new Federal tort law standards, without regard to the already crowded Federal courts than they have about the problem of the waste sites themselves. They seem to forget that our principal concern ought to be the problem of cleaning up hazardous waste sites that have been abandoned.

Mr. Chairman, it is important that in considering this bill the House take into consideration the attitudes expressed not only by the administration and various House Members, but also recognizes what is being proposed in the Senate. I am concerned that many people who have urged Members of Congress to support these various superfund proposals have not been aware of many of the new concepts that these proposals advocate. People in the Senate have made it quite clear that they intend to push the "zero release" concept. That "zero release" concept would serve as a regulatory tool against anything that escapes the four walls of a plant.

This outrageous concept undercuts existing environmental regulations, and, if enacted and enforced, could possibly bring most industrial activity to a complete stop. Many proponents of super-fund legislation are insisting that any organization having contributed in any degree to a hazardous waste release be held responsible for the entire amount of the cleanup and damages [Sec. 107]. These punitive attitudes have created an environment that has not been conducive to the development of a good legislative product. These attitudes are why we are going into the final days of this session without having passed legislation to deal with the cleanup of hazardous waste sites.

Mr. Chairman, H.R. 7020 is a reasonable and balanced bill. As I am sure the Members know, this bill was sequentially referred to the House Ways and Means Committee. The Ways and Means Committee doubled the amount of funding to a total of $1.2 billion, imposing a new tax of $900 million [Sec. 211]. While I do not quarrel with the Ways and Means jurisdiction on this portion of the bill, I can say that this bill would not have been reported by the Commerce Committee if it had contained this $900 million tax. In fact, the full Commerce Committee rejected efforts to increase the funding for this program by a more than 2-to-1 vote. I am hopeful that my colleague from New Jersey will properly represent the Commerce Committee position to this House, but I want the Members to know that compromise and agreements were essential in developing this balanced bill, and those agreements were essential for this bill having been reported for consideration by the full House today.

Of particular concern to me and a number of my colleagues on the Commerce Committee were the liability issues of this legislation. Especially difficult were the ramifications of retroactive application of statutory liability provisions to past activities of potential defendants. As the committee report succinctly points out, the committee rejected any notion of absolute liability in this regard. While this may be somewhat of a hybrid liability provision, it provides fundamental fairness [Sec. 107].

Mr. Chairman, although I have not been very encouraged by the legislative process surrounding this issue, I have been encouraged by much of the activity being promoted by other State and local government entities. States are moving forward in their efforts to inventory all hazardous waste sites. In Illinois, for example, the State has imposed its own plan to help control the movement and disposal of hazardous wastes within the State. In addition, States are moving forward to have money available to clean up hazardous waste sites.

Industry recognizes the need for legislation this year. Various "superfund" proposals have generated vigorous opposition from segments of industry, but industry has been willing to compromise, and this bill, as the gentleman from New Jersey has indicated, has wide support from the Chamber of Commerce, the National Association of Manufacturers, the oil industry, and the chemical industry.

I would like to insert in the record the testimony of Dr. Louis Fernandez, vice chairman of the Monsanto Chemical Co., which was given in the Senate on behalf of the Chemical Manufacturers Association supporting H.R. 7020.

We need the cooperation of industry in our efforts to clean up abandoned waste sites and we need industry's continued cooperation with the cleanup effort, because this country needs its technical expertise and resources if we are going to do this job promptly.

Mr. Chairman, H.R. 7020 is an important legislative proposal. I would urge the Members of the House to support this bill, but also to support efforts to see that this bill is not distorted or expanded in such a way that would result in its failure to pass this year.

TESTIMONY ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION GIVEN BY DR. LOUIS FERNANDEZ, VICE CHAIRMAN OF MONSANTO CO., BEFORE THE SENATE FINANCE COMMITTEE ON SEPTEMBER 11, 1980

First, Mr. Chairman, I want it known clearly and without any doubt that the CMA and its member companies strongly support new legislation to solve the problem of abandoned hazardous waste sites. Our industry does support a federal response fund which could take action when there is danger to public health or the environment or when no other party is taking responsible action [Sec. 111]. For more than a year, we've been trying to work with the Congress to achieve sound dumpsite legislation. And finally, Mr. Chairman, although our industry opposes fees in principle, we are prepared to contribute a fair share to help pay for cleanup [Sec. 211].

Let me summarize our views. The chemical industry supports H.R. 7020 as it was reported by the House Interstate and Foreign Commerce Committee. We oppose S. 1480 which is a legislative disaster. It's too broad. It tries to punish the chemical industry. It sets up a revolutionary federal toxic tort liability scheme for past actions which were perfectly legal at the time [Sec. 107]. And its funding levels are far, far in excess of what is needed.

As to the funding mechanism of 1480, we believe the bill goes at it the wrong way. If Congress wants to draw any relationship between problem and solution, then the fee should be placed on waste—not on the purchase of feedstock raw materials [Sec. 211].

This committee—and the Senate itself—owes a responsibility to society to look at the problem and the solution as dispassionately as possible. The enormity of the fund proposed in 1480—together with the broadened liability exposure—will clearly have a negative effect on the domestic chemical industry and would be inflationary. The more than $4 billion proposed by this bill won't just slip between the cracks; it will have a very large impact.

S. 1480 is a revenue measure. It levies a substantial fee or tax on our industry to pay the lion's share of Superfund. And it is certain to affect our ability to export. I've supplied some figures for the record, but let me just remind the committee that our industry is one of the few which is still very competitive around the world. We are making positive contributions to the balance of trade in the amount of about $10 billion annually.

So that is why, Mr. Chairman, the chemical industry and other concerned industry groups oppose S. 1480 in its present form and support instead H.R. 7020. We urge you to look very closely at H.R. 7020. It's a tough, effective bill that will work to solve the abandoned hazardous waste site problem.

What we are asking this committee to do is the following:

1. Reduce the funding.—The chemical industry has documented that orphan dumpsites can be cleaned up at a cost of about $400 million, or about $1 million per site.

2. Adopt a waste-end fee.—A waste fee would create a broad tax base without taking a bite out of any specific industrial category. After all, some 17 industry groups—not just the chemical industry—contribute to the generation and disposal of hazardous waste. A feedstock fee falls heavily on just 15 major petrochemical-based companies. And that's simply unfair.

Moreover, there's no incentive in a feedstock fee to reduce waste. But a waste-end fee would encourage manufacturers to further reduce their generation of hazardous waste. Regulations recently promulgated under the Resource Conservation and Recovery Act (RCRA) set up the necessary record-keeping and reporting requirements for industry. We disagree strongly with the EPA on this point. Our analysis indicates that it would be a relatively simple matter to set up a tax payment form.

In my prepared remarks, I have submitted background information on what we consider one of the most dangerous and precedent-shattering parts of S. 1480—the liability section **[Sec. 107]**. I'd like to give you an example of our concern. Let's envision, for a moment, that an orphan dumpsite has been discovered. It is known that at least 50 disposers have used the site. But the Justice Department decides that just one of those companies—likely to be one with sales exceeding several billion dollars per year—should be singled out for attack. Under 1480, it would be entirely possible that one company might have to bear the entire cost of the cleanup, while at the same time it has been making fee payments into the cleanup fund. This is what is meant by joint and several liability. I might just add that the Justice Department—in testimony by Assistant Attorney General James W. Moorman—clearly looks to the liability provisions as a further revenue raising system. The entire thrust of his testimony was not whether joint and several liability is fair or necessary or proper . . . but rather that it is needed to help "replenish" the Superfund. This aspect of the proposed legislation is one that should be directly addressed by members of this committee.

There are other points in my prepared remarks. But to sum up, I'd like to reflect on my own experience with Monsanto and with the American chemical industry. There is no doubt that many disposal practices of the past do not meet today's high standards. That's understandable. We know more today than we did 35 years ago. My company and others are investing hundreds of millions of dollars in new and improved environmental safeguards of all types, especially the handling of hazardous waste. I am concerned though, Mr. Chairman, about a thread which weaves its way throughout S. 1480. And it is that the chemical industry is evil, that it needs to be punished for the sins of the past, that it does not care about its workers or the citizens of this country, and that it has enormous "profits" which can be tapped indefinitely to solve societal ills. I am here today to state flatly that this is a false assumption on the part of some Superfund advocates. We've all heard a lot about midnight dumpers. There will always be some bad apples in the barrel—midnight dumping must be rooted out and prosecuted wherever it occurs. The American chemical industry is prepared to work cooperatively and positively with federal, state and local governments to solve this problem so we can get on to the job of creating new jobs, new products and making new discoveries which service all of mankind.

Thank you, Mr. Chairman, I will be glad to respond to any questions.

Mr. FLORIO. Mr. Chairman, I yield 6 minutes to the gentleman from Tennessee (Mr. Gore).

(Mr. Gore asked and was given permission to revise and extend his remarks.)

Mr. GORE. Mr. Chairman, I would like to begin by paying my respects to the chairman of this subcommittee, the gentleman from New Jersey (Mr. Florio) and the ranking minority member, the gentleman from Illinois (Mr. Madigan) for bringing this legislation out of the Commerce Committee and to the floor in order to address this most serious environmental problem facing the United States of America.

I would also like to compliment the gentleman from New York (Mr. Downey) for the work done in the Ways and Means Committee to improve the bill and encourage my colleagues to support the Ways and Means substitute.

I would also like to thank the gentleman from New Jersey (Mr. Guarini) for his excellent work on the liability sections in the debate during the Ways and Means Committee markup.

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The Oversight and Investigation Subcommittee of the Committee on Interstate and Foreign Commerce is not a legislative committee. But in pursuit of our responsibilities to conduct oversight of the areas within the jurisdiction of the Committee on Interstate and Foreign Commerce we began in the last Congress a series of 18 hearings which have lasted up through this year into the problems associated with hazardous chemical waste disposal. First of all, we have found that the magnitude of this problem is incredibly large.

One hundred billion pounds of hazardous chemical waste is dumped in this country every single year, 100 billion pounds, 90 percent of it improperly. And that figure grows by a rate of 6 or 7 percent each year.

There are abandoned hazardous waste sites in virtually every part of this country. They are threatening the groundwater of this country upon which 50 percent of Americans rely for their water supplies.

It could well be that before the end of this century tens of millions of Americans will find that the water supplies on which they have relied for centuries are now poisoned and polluted. So we must address this problem.

There are two major aspects to the problem: First, the prospective dumping, that is, dumping that will occur in the future. Second, dumping that has already occurred in the past.

As the gentleman from New Jersey pointed out, the prospective dumping will be addressed in a regulatory program to take effect later this fall pursuant to the mandate of the Resource Conservation and Recovery Act.

What we are addressing in this legislation is the dumping that occurred in the past. There is, of course, a connection between the two because the same industry that is principally responsible for dumping now and in the future has also been principally responsible for the dumping that has occurred in the past.

As my colleagues look at this second subdivision of the problem, the one we are focusing on with this legislation, past dumping practices, again we have two parts to that problem. First, abandoned dump sites where the party or parties responsible can be identified. Second, abandoned dump sites where the party or parties responsible are either unknown or insolvent or have covered their tracks sufficiently so that they cannot be assigned responsibility for the problem.

With regard to that first part of the problem where the party or parties responsible are known, this bill addresses the liability faced by those companies. I will be offering amendments to the liability portions of this bill in order to clarify the effect of the law where we know the parties responsible [Sec. 107].

I think we can agree on the general principle that where we know the party responsible we ought to affix responsibility for the problem upon that party.

The bill, as it currently stands, has some difficulty with regard to affixing responsibility. I anticipate broad support for the amendments that I will offer in order to eliminate that difficulty. A great deal of work has been done in an effort to reach some compromise and I am highly optimistic about the outcome.

With regard to the second part of the problem, those abandoned dump sites where the party or parties responsible are unknown or insolvent, this bill addresses that problem in a responsible way by creating a fund that can be used to clean up the problems that were created in the past. It puts a tax on the chemical feedstocks that go into the manufacture of chemical compounds **[Secs. 211 and 221]**.

When this was first proposed I frankly had some questions about the approach being taken. However, upon examination of the approach taken I became thoroughly convinced that it is an ingenious approach and, indeed, by far the most effective approach that we could take.

I would ask my colleagues to support in the strongest possible way the Committee on Ways and Means' substitute to title II so that the industry primarily responsible for this problem will bear the lion's share of the burden for solving this problem.

I would also ask my colleagues to support the liability amendments that I will offer.

I would like to close by again thanking those who have worked so hard to craft this legislation.

Mr. MADIGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. Lee).

(Mr. Lee asked and was given permission to revise and extend his remarks.)

Mr. LEE. Mr. Chairman, I rise in support of H.R. 7020, as passed by the Interstate and Foreign Commerce Committee on which I serve, and urge my colleagues to quickly endorse this much-needed legislation.

It is vitally important that we insure, in this 11th hour of the 96th Congress, that positive action is taken to protect present and future generations of Americans from contamination by chemicals from abandoned toxic waste sites.

Last year, both Congressman Madigan and I designed and supported legislation to solve this serious problem, but unfortunately that measure failed in committee. The risk is too great, and the dangers too real, Mr. Chairman, to delay action on this proposal any further.

Collectively or individually the estimated thousands of chemical and industrial waste dumping sites represent serious threats to this Nation's communities. Fortunately, they all are not of the same severity of Love Canal in my home State of New York. Yet no one—in Government, in industry, or in the communities themselves—can honestly determine the extent of the threat these waste materials represent, or even where all the dumps are located.

I would like to highly commend my colleagues Congressmen Madigan and Florio for the leadership they have provided in shaping this legislation in the full Commerce Committee. I am pleased to be associated with these gentlemen in their outstanding leadership to clean up the Nation's poisonous waste sites, before they do additional damage to our people and environment.

Because the precise number of potential hazardous waste sites is in question, our first step is to establish as its highest priority a

State-by-State inventory of the number of inactive sites, and their relative danger to the public. Once completed, each inventory will be forwarded to the Administrator of the U.S. Environmental Protection Agency. Cleanup operations will be placed in a priority order, according to their immediacy of need. This process is designed to insure the most potentially dangerous sites are addressed first [Sec. 105(8)].

I am encouraged by the partnership the commerce bill forges between Government and the chemical industry that will develop a fund to provide the monetary resources required to address the serious problem. I am hopeful this partnership will continue and grow, and that chemical manufacturers across the Nation will do all they can to encourage the speedy discovery and cleanup of abandoned hazardous waste sites.

Mr. **Florio**. Mr. Chairman, I now yield 5 minutes to the gentleman from Massachusetts (Mr. Markey).

[Mr. Markey addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

[**Note**: Mr. Markey's remarks appear in the debate of Sept. 23, 1980, p. 375 of this volume.]

□ 1110

Mr. **Madigan**. Mr. Chairman, I yield such time as he may consume to the distinguished ranking minority member of the Committee on Interstate and Foreign Commerce, the gentleman from North Carolina (Mr. Broyhill).

Mr. **Broyhill**. I thank the gentleman for yielding.

Mr. Chairman, as minority members have pointed out in supplementary views on H.R. 7020, we do support legislation to deal with this problem of cleaning up abandoned and inactive hazardous waste sites. Also I would point out that minority members in their views before, in a report issued by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, wrote that "we believe that the issue of hazardous waste disposal should be one of the first priorities of this Nation."

However, we do continue to express concerns about parts of these bills, and we do not like to hear, because we do question certain sections, that we are opposed to the bill or trying to block the legislation. I would point out that I note that the other body has not gotten as far as we have with respect to this legislation. I have listened very carefully to the gentleman from Massachusetts (Mr. Markey) who just preceded me in the well and certainly recognize the problems that he has outlined in his statement.

Certainly we recognize that there are gaps in existing law. We are dealing with the establishment of programs to contain these orphan sites or sites over which there is no control. I believe that we should have a program where the people responsible for these particular problems are made to pay.

I think there are problems with the fees contained in this bill because what we are doing in this program is bringing in and punishing the innocent along with the guilty [Sec. 211].

I would outline for the benefit of my colleagues an editorial in the Washington Post which pinpointed one of the major problems with the fee that is contained in the bill, and I quote from that editorial:

> The trouble (with the fee) is that this approach makes no distinction between companies that are careful with their waste and those that are careless or even grossly negligent. Consequently, it removes most of the incentive to improve. If you have already paid once (into the fund), it is hardly good business to pay twice by, for example, redesigning your process so it generates less waste. Thus, Superfund violates the tenent that regulation should be designed to encourage a higher standard of care: to prevent damage, not punish.

Perhaps maybe we could have discussed—we discussed it only briefly earlier this year—a program where we might have had a fee attached to the disposal of waste. Perhaps that would have provided far more incentive for people to clean up and to be more careful in the disposal of potentially hazardous waste. So I do hope that as we go along we would pay careful attention to some of the concerns that some of us have with various parts of the bill in the hope that we can arrive at a program that is workable and will offer some hope to clean up these orphan sites.

I might point out that in the subcommittee consideration the gentleman from Illinois (Mr. Madigan) and I offered a substitute when this bill was considered there in subcommittee, and this proposal would have established a hazardous waste site program along these lines:

First, it established an inventory program in conjunction with the States in order to identify each and every hazardous waste site in the Nation;

Second, it required any owners or operators of hazardous waste sites to notify EPA [Sec. 103(c)];

Third, it provided EPA with an emergency response authority to respond to dangerous releases from hazardous waste sites [Sec. 104];

Fourth, it put into position a national hazardous waste response plan [Sec. 105];

Fifth, it provided for cost-sharing with the States, requiring that States pay 10 percent of the containment and cleanup costs for those sites where there is no responsible organization able to pay the full cost [Sec. 104(c)(3)];

Sixth, it established a plan for the siting of facilities which encourages State cooperation on a regional basis in order to identify and locate for the storage or relocation of hazardous waste;

Seventh, it established the hazardous waste containment fund, providing $100 million for each of the years 1981, 1982, and 1983 [Sec. 221]; and

Eighth, the substitute imposed strict liability, requiring the owner or operator of the site which is the source or potential source of a release to be responsible for those costs associated with the containment or relocation or cleanup of that site [Sec. 107].

I did want to point out for the record another alternative that had been offered at an earlier time.

□ 1120

Mr. Gore. Mr. Chairman, will the gentleman yield?

Mr. Broyhill. I yield to the gentleman from Tennessee.

Mr. **Gore**. First, the gentleman talked about the alternative of putting a fee on the disposer. This was one of several alternatives that was considered early in the formation of this legislation. I would like to briefly point out, the real problem with taking that approach is that you encourage the use of the so-called midnight dumper. Part of this trouble is that irresponsible disposing companies who seek to evade the currently existing regulations, where there are some in some States, so if you put the fee on the disposers, you might really make that aspect of the problem worse [Sec. 211].

Second, the gentleman talks about lumping the innocent with the guilty. I have two things in response to that. First, this has been an industrywide practice by and large and the prospective dumping incentives are addressed in the RCRA legislation.

Third, this legislation really does help those who are trying to be responsible by removing the unfair advantage that irresponsible companies have taken by dumping their waste in an unacceptable fashion.

Mr. **Broyhill**. That last point the gentleman makes I do not understand. What you are doing is taxing people who are perhaps operating in a responsible way and you are not taxing the people who are dumping in an irresponsible way.

Mr. **Gore**. Well, the industry as a whole is being asked to accept a substantial part of this burden along with the taxpayer, largely because it has been an industrywide practice in the past.

Mr. **Broyhill**. Perhaps the irresponsible dumper has not ever paid the tax because he is not manufacturing the feedstocks that would be taxed under this bill.

Mr. **Gore**. And this illustrates the wisdom of the feedstock approach because it is then passed on to all dumpers.

Mr. **Florio**. Mr. Chairman, will the gentleman yield?

Mr. **Broyhill**. I yield to the gentleman from New Jersey.

Mr. **Florio**. This is a very interesting conversation. I would just suggest we probably have gone beyond the point of discussing these points because there has been a consensus that all parties to the discussion have signed off with regard to appropriate allocations.

I would like to commend the gentleman and say that he has been perhaps a bit too modest because the substitute to which the gentleman referred—it was not accepted by the subcommittee—did have in it some of the key provisions of this bill which are subsequently adopted. That is the siting question which is a very important question; the inventory provisions and many of the other key provisions, were offered by the gentleman from North Carolina (Mr. Broyhill) and the gentleman from Illinois (Mr. Madigan) in the subcommittee, and the merits of those provisions were seen and perceived by the rest of the committee as being very important and the merits were determined to justify their inclusion into this bill. I think in many respects the two gentlemen particularly as well as all of the minority members may feel a kinship with the final product. That is commendable and I appreciate the contribution.

Mr. **Broyhill**. It was not my point to make the fee the center part of this debate. I did want to point out that other alternatives had been presented in the past, other ideas for dealing with this particular problem.

Mr. **Florio**. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Maguire).

(Mr. Maguire asked and was given permission to revise and extend his remarks.)

[Note: Mr. Maguire's remarks were printed in the Extensions of Remarks, Sept. 22, 1980, p. E4498.]

Mr. **Maguire**. Mr. Chairman, I thank the gentleman for yielding. I think there is a broad consensus in this body that this is one of the most important bills that we are dealing with in this session. Indeed, it may be the most important. I do not think there is anything Americans are more fearful about than the possibility that their families or their children or their children's children will be exposed to cancer, nerve disorders, birth defects, from substances that may not have been dealt with as carefully as they ought to have been, substances that may be found in drinking water, in consumer products, in play areas where children may amuse themselves. A kind of silent, unseeable threat which is all the more fearful because it cannot be adequately measured or understood.

There have been the spectacular incidents: Love Canal in New York, "Valley of the Drums" in Kentucky, the Chemical Control Corp. in New Jersey, but there are also hundreds and hundreds of communities around this country who are beginning to find things like trichloroethylene in their drinking water supply. This is true in Mahwah and Fair Lawn in my district. In Jackson Township, N.J., thousands of people have had their water supply shut down because of contamination. In Wood-Ridge in my own district in Bergen County we have the largest mercury dump ever discovered anywhere in the world.

The problem is people in the past have walked away from their responsibilities to dispose carefully of the material which has the hazardous effects.

Earlier on in our history we used to do pretty well. Once we discovered something we would act on it. If we had a problem with typhoid, diphtheria, smallpox, or polio, people went to work to figure out what to do about it and determine how people could be protected, how they could be cured, how they could be afforded preventive measures. We acted on that information as soon as the scientists came up with it.

I would suggest that perhaps we were so good at doing that because nobody was harmed. Now when we have manmade hazards and threats which are more difficult to measure but are no less lethal, we find we are falling way behind what we ought to be doing to protect our people.

Mr. Chairman, may I suggest it may be that we were so good earlier because there were no well-paid lobbyists in favor of the typhoid bacillus, there were no law firms representing polio.

Mr. Chairman, today we have a problem of very specific economic interests. Some of the same folks who walked away from this problem earlier would like to do the minimum now. I would suggest we cannot afford to do just the minimum, that we need the strongest possible bill that will enable us to deal with hundreds, indeed thousands of toxic dump sites across the country.

I want to congratulate my colleague, the gentleman from New Jersey (Mr. Florio) and my colleagues, the gentleman from New

York (Mr. Downey) and the gentleman from Tennessee (Mr. Gore) for the excellent work they have done on this legislation in the two committees concerned. I think the public interest requires that we act in this session and that we have the strongest possible bill.

I yield back the balance of my time.

Mr. **Madigan**. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. Paul).

(Mr. Paul asked and was given permission to revise and extend his remarks.)

Mr. **Paul**. Mr. Chairman, I thank the gentleman for yielding.

So far today we have heard the many good reasons why we have to introduce and pass this bold new legislation. Some days I get very discouraged here in Washington. There are other days I am encouraged because I do hear talk of balanced budgets and other good things mainly because the American people are anxious to hear about it. In action we do not generally follow through. Today we all express great concern for the people who may be suffering the consequences of pollution from toxic waste sites and I, too, am concerned.

Mr. Chairman, I am also concerned with this legislation today because in contrast to what has been said, I feel this legislation is very unfair. I cannot conceive of it working because I think it will work just like any other Government program and I believe sincerely it will do a great deal of harm as well.

☐ 1130

Yes, there is always danger in a free society. There is always danger everywhere, but the egalitarians who insist that we have perfect safety, perfect remuneration, and perfect redistribution of wealth. This is the ultimate goal of the egalitarians. Yes, it is an accepted fact that for the past 50 years we have assumed that it is a proper function of Government to spread the fruits of labor by acts of the Government and at the discretion of the politicians. But must we go to the next step and assume that we will share the penalties as well? I believe sincerely that we should hold individuals responsible for all their acts.

Recently one of our colleagues was convicted of a felony and sentenced to prison.

If anyone had suggested that we, his colleagues, collectively share his guilt and share his punishment by each serving part of his sentence, he would have rightfully been laughed off the floor.

If a murder is committed in your hometown, how would you react if someone proposed that everyone in town assume the guilt and share a part of the sentence? I am sure you would be outraged and rightfully so, and yet that is exactly the principle we are following here today by creating a superfund.

The real issue we are dealing with in this legislation is whether or not we as individuals are responsible for our acts. Passage of this bill would clearly indicate that we as a legislative body do not accept the notion of self-responsibility, and that innocent people should pay a penalty for the negligence of others.

In the past several decades, the concept of personal and corporate liability has been systematically undermined. This legislation will continue this process, as well as further damaging the right to private property ownership.

Certainly the concept of individual rights, as compared to collective rights, and individual responsibilities needs attention for it is legislation of this sort that fritters away this ideal that took so long to develop. The question we must all ask is this: Are rights collective or individual? Can guilt be passed on to society in general or can laws based on individual responsibility and liability satisfactorily compensate injured parties in a free society?

No one can deny that danger exists with toxic waste just as it exists with thousands of other things we deal with daily in modern America.

It is obvious that life and life's activities are never without danger. The goal, no matter how well intended, of perfect protection from all potential danger is an illusion. It is doomed to frustrate the egalitarians even more than the utopian goal of equitable distribution of wealth—by force of the state—they also eagerly seek.

Although one would get the impression from the debates on the House floor that only one type of solution is available to us in solving problems such as toxic wastes, we do have another option.

I do not accept the contention that intervention by the Federal Government is necessary when it is said that "responsible owners no longer exist"—for responsible owners always exist in a free society. The contention that a modest Federal program with financial assistance to the States can handle these problems is going in the wrong direction for even a limited program.

Tragically, for the past 50 years our solutions to similar problems generally have been based on the notion that rights are collective and guilt and responsibility are not individual matters. By claiming society is an entity in itself and the Government must always act in the best interests of society, those in charge failed to note that some person in power had to make a value judgment as to just what in particular is in the best interest of particular individuals. Society becomes just what they say it is.

The goals sought by legislation become the biases of special interests, of lobbyists and politicians representing the special welfare or benefit of a few, while the general welfare of all the rest is being abused. With the absence of a clear understanding of individual rights and responsibilities our society and political process will drift into chaos, because the power of lobbyists and bureaucrats will eventually rule completely.

We see in this legislation bold new emergency powers being granted to the EPA. It essentially cancels State tort laws and mandates that settlements be taken out of the court and put into the bureaucracy without access to due process law and trial by peers. All this on top of the outrageous expense that this bill will entail.

The absence of a clear understanding of individual responsibility is apparent in our judicial system as well today. Our sociological judges are "soft" on criminals, giving minimal sentence to vicious criminals because they have been "victims of an unfair society" and are not responsible for their acts. Since society hurt them, society must pay. Yet we must remember someone in particular will decide who society is, who in particular benefits, and who in particular pays. In the meantime individual rights and freedom will be further diminished for all Americans. Legislation like the superfund will mandate that the injured be compensated by the innocent. The discussion concerning the specifics of personal liabilities has been confused and will continue to be confused if we insist on Federal programs that mandate our financing an outrageous system of so-called justice that ignores property rights and supersedes the traditional legitimate court system.

It has been argued that the present judicial system is too slow and complex to handle the problems that may arise from hazardous waste suits. That is not the case at all. Were our courts allowed to function under the common, tort law, any suits that might arise could be settled equitably and quickly. It is not the judicial system, but the regulatory system that has been imposed by both State and Federal governments, that is slow and complex. Were this system abolished, the judicial system could function properly. Bypassing our judicial system and leaving the regulatory system intact is the precise opposite of what should be done.

The Love Canal episode demonstrates so well how government—the City of Niagara Falls and the Niagara Falls Board of Education—creates a problem and then how that problem is compounded by the hysteria of an EPA pseudo-scientist. Government is the problem, not the solution, and the sooner we learn this the better off the country will be.

The same ethical standards which insist that the fruits of one's labor be shared forcefully and arbitrarily at the command of the State accept, quite consistently, the notion of "spreading the pain" of paying for personal injury or property damage to everyone "equally." Some will claim that this legislation will make the responsible companies pay. Yet if past experience is of any value, we can be sure it will not work that way. So far the only companies that have lobbied for this bill have been those involved with waste disposal. The taxpayer one way or another, will eventually get stuck with this bill, through higher costs for production or higher taxes or more inflation. We can be certain also from past experience not to expect any help whatsoever in solving the problem of handling toxic wastes. It is most likely that the problem will get worse, not better.

Ignoring individual rights and individual liberty is unfair, immoral and is doomed to failure. That is the message the economic mess we are facing today is trying to tell us. Even though the funds we vote on today are huge, they will prove miniscule when this principle of collective guilt for all injury becomes accepted throughout our economic system.

There is an alternative to the economic egalitarian notions that have driven us to the point of economic stagnation, social upheaval and potential war That alternative is easily applied, moral, just, and workable. It is sad that we rarely describe and discuss the alternative to the ancient tradition of collectivism. That alternative is embodied in the concept of individual rights, the recognition that we have a right to our own lives and to the fruit of our labor, but no right to anybody else's. All association under these conditions must be voluntary and contracts must be held inviolate.

Private ownership virtually precludes any injury to another, and if there is injury or damage to property, the responsible person is 100 percent liable. Tort law should not be tampered with. It may not be a perfect solution to all our personal injury problems, but it is the best. Increasing the power of an EPA bureaucrat and establishing a superfund certainly cannot even be classified as a solution. They are problems in themselves.

Malpractice in medicine is a good example of how voluntarism and the marketplace solves personal injury problems. Doctors now run malpractice insurance companies, and these are a godsend to both the patients and the medical doctor. The chemical companies would do the same if we would just get out of the way and define their liabilities based on rules of private property ownership and individual responsibility.

Mr. **Florio.** Mr. Chairman, I yield myself so much time as I may consume.

As we start to wrap up this debate as far as the Commerce Committee portion is concerned, I think it is important to know what the bill does, and perhaps respond to the comments of the previous gentleman who spoke. That is a bill that is designed to deal with a real problem, now. All too frequently, we were to rely on the traditional approach, such as litigation, prosecution, or more studies, we go forward at a very slow pace. This problem cannot tolerate the slow pace that has been the traditional response, when there has even been a response.

Provisions in this bill provide the authority for immediate cleanup and containment response authority; provide for the funding for that cleanup and containment; and provide the authority to then go and determine who it is that is responsible. So, no one should have the thought that we are letting those who have done inappropriate and irresponsible things walk away. That is not the thrust behind the bill.

I would just ask that we go forward and consider this legislation in an expeditous fashion. There may very well be philosophical differences, and I am convinced that during the course of our deliberations in the next week, hopefully, we will resolve those problems and we will go forward in order to induce the other body to enact legislation this year. The American people are demanding that we have a legislative response to this problem. For this Congress to go home without superfund legislation would be very unfortunate to the people's perception of whether we have a legislative body that is responsive to the people's needs.

There will be amendments that will be offered to provide more studies. We do not need more studies. There will be amendments offered to provide for State grants, to let the States start to formulate programs. The States are looking to us. We have had testimony from State associations, from the Governors' associations, saying that they do not have uniformity or expertise or resources; they need guidelines. That is, in essence, what this is. This is not a new bureaucracy which is being created. In essence, what we are saying is there must be a Federal capacity to respond to these problems, but EPA is charged with the responsibility of deferring to those who are onsite, who have the capacity and inclination to clean-up and contain. They are charged with the responsibility of dealing with the States when the States indicate that they do desire to go forward. EPA has a mandatory requirement imposed upon them to enter into agreements with the States to let the States and the onsite people deal with cleanup and containment.

So, this should not be construed as a large new bureaucratic program that is being created. I would just ask that we go forward with this legislation, deal with it so that we can have a response formulated for the benefit of the people.

Mr. **Madigan**. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. Bauman).

(Mr. Bauman asked and was given permission to revise and extend his remarks.)

Mr. **Bauman**. Mr. Chairman, the name of William Grigsby does not ring a bell with most Americans, but to the few hundred citizens of Sharptown, Md., on the banks of the Nanticoke River, he is a very real person. Mr. Grigsby, a citizen of Delaware has already been convicted in the courts of Wicomico County, Md., for responsibility for abandoning a number of tanks full of toxic chemicals including PCB's and waste oil 50 feet from the banks of one of the most fertile rivers that flows into the Chesapeake Bay, a spawning ground for fish, crabs, and oysters.

A year and a half ago, the gentleman from Maryland and officials of the State of Maryland became aware of Mr. Grigsby and his activities because Sharptown's mayor, Ralph Corddrey, alerted us to the fact that toxic chemicals were leaking from those tanks. In the ensuing hours spent by my staff and myself seeking a solution to this problem we sank into one of the worst legal quagmires I have ever seen. The answer that we finally reached was that no one seemed to be responsible—not Mr. Grigsby, not the State of Maryland, not the Coast Guard, not the EPA or any other Agency.

It was only through the good offices of the gentleman from New York (Mr. Murphy), the gentleman from New York (Mr. Biaggi) and others who worked with us to solve the problem that the U.S. Coast Guard finally accepted the responsibility under a very liberal interpretation of the statute under which they now act as one of the agencies charged with cleaning up chemical spills.

The Sharptown situation convinced me that there is in fact not only a national and interstate responsibility for dealing with this, but that the Congress had to act. I am not sure that this legislation before us today is in its most acceptable form. I am not sure the Congress has the collective capacity to write a bill that would solve all the problems of all the Sharptowns in our country. I look forward to the perfecting amendments that may be offered, but I do know, as one who has a major concern about Federal intrusion and the irresponsible acts of Federal agencies, that someone must act to prevent future occurrences such as happened in my State and are happening all over this country.

I also think the responsibility for these toxic chemicals has to be placed individually, as the gentleman from Texas (Mr. Paul) suggests, but also collectively to some degree. I would hope that all Members would approach this legislation with the thought in mind that this is a growing and serious national problem which must be addressed and soon.

Mr. MADIGAN. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana (Mr. Moore).

Mr. MOORE. Mr. Chairman, I appreciate the gentleman yielding to me. I think the last several speakers, including the chairman of the subcommittee, touched on something that I would like to comment on very briefly; that is, the role the States play in this.

Louisiana has passed legislation in this area. Louisiana has a great, complex chemical industry, and unfortunately the storage sites. The problem in Louisiana has not been not knowing how to handle it or needing guidelines, but needing money.

I think that is the key, the State and local governments are looking toward the Federal Government to provide the money. I would agree with the gentleman from Maryland that there is a collective responsibility of this Nation as a whole to clean up these sites that have long since been abandoned, where we cannot find the responsible companies, or they are no longer in business.

But, the real key is the lack of money rather than technical ability or the lack of administrative know-how.

Mr. MADIGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina (Mr. Martin), an active participant in the development of this bill thus far.

(Mr. Martin asked and was given permission to revise and extend his remarks.)

Mr. MARTIN. Mr. Chairman, I thank my colleague from Illinois for his work on this legislation, as well as the gentleman from New Jersey (Mr. Florio) who has provided excellent leadership in bringing us to the point where we are today.

Mr. Chairman, I agree with the gentleman from New Jersey (Mr. Florio) to go forward with this legislation. I would express my personal hope that we can air our differences on how best to go forward, but do so in a timely fashion. There are some who want to put the burden for delay on those who oppose what they regard as extreme amendments.

□ 1140

But it would seem to me that burden must at least be shared by those who insist on overloading this bill.

So I say, let us move forward to adopt legislation now to start the effort needed to clean up these abandoned, hazardous chemical dumpsites and avoid overloading the bill with amendments that could risk dragging our feet until it is too late.

It is my hope, Mr. Chairman, that we can continue to debate this issue and resolve it without, in one direction, accusing one another of evil motives when we are all trying to deal with a very difficult problem and trying to do it in a timely fashion. Secondly, I hope that in continuing to do this, we can resist the impulse to try to create a general phobia about chemicals.

The chemical industry is an industry which has produced many products which have added to our quality of life, to our life expectancies, and to our ability to produce food in this country and around the world. As we move to clean up these hazardous dumpsites that have festered about the country as an offshoot from this industry, let us be very careful that we do not engage in trying generally to create a phobia and a general fear among the public about this industry and about the important chemical products which are of such great value to us.

Mr. Chairman, I thank the gentleman for yielding me this time.

The **Chairman**. The gentleman from Illinois (Mr. Madigan) has 1 minute remaining.

Mr. **Madigan**. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The **Chairman**. The Chair recognizes the gentleman from Illinois (Mr. Rostenkowski).

Mr. **Rostenkowski**. Mr. Chairman, I yield myself such time as I may consume.

(Mr. Rostenkowski asked and was given permission to revise and extend his remarks.)

Mr. **Rostenkowski**. Mr. Chairman, the Ways and Means Committee amendment to H.R. 7020, the Hazardous Waste Containment Act of 1980, adds a new title II which will raise the minimum revenues necessary to fund the program for cleanup of inactive chemical waste sites created by title I of the bill. The committee believes a reliable and available source of funds is needed to respond to the growing threats to the public health and environment which arise from inactive hazardous waste sites such as the Love Canal in New York, the Valley of the Drums in Tennessee and numerous others. To assure that the tax revenues collected from the chemical industry for this vital cleanup program will be available for that use, the committee has established a trust fund.

THE EXCISE TAX [Sec. 211]

The committee amendment provides for $900 million in revenues over a 5-year period. This revenue will be raised by two new taxes, one on crude oil and imported petroleum products, the other on petrochemical feedstocks and certain inorganic chemicals. The substances subject to the tax are the basic raw materials out of which most hazardous substances are created.

The tax on oil and imported petroleum products is .6 cent per barrel. This tax will be collected at the refinery or at the point of import or export. If crude oil is used without passing through a refinery, the tax will be imposed on the user unless the oil is used at the point of production to fuel further production.

The tax on petrochemical feedstocks is $2.54 a ton and is imposed on the producer or importer of feedstocks. The tax on specified inorganic chemicals is $2.33 a ton. This tax is also imposed on the producer or importer. The feedstock and chemical tax will be imposed only once on the same substance. Title II as reported by the Ways and Means Committee would provide only one exemption from the tax; that is, an exemption for feedstocks and chemicals used to produce fertilizers. A further committee amendment will also require the Treasury to provide an exemption for the fuel use of any feedstock, a principal use of which is use as a fuel. The effect of this amendment will be to exempt from the tax the fuel use of methane, for example.

The tax on crude oil and imported petroleum products is expected to raise $35 million a year. The tax on petrochemical feedstocks will raise $108 million a year and the tax on inorganic chemicals will raise $36 million a year. These taxes will expire after September 30, 1985. Thus, over the life of the taxes, $900 million will be generated for use in the cleanup of inactive hazardous waste sites. This amount, supplemented by $300 million in appropriations authorized over the same period, is the absolute minimum necessary to begin a responsible effort to solve the Nation's hazardous waste problem. It is estimated that this amount will finance cleanup of only the 250 most critical sites.

THE TRUST FUND [Sec. 221]

The taxes raised by title II will be placed in a hazardous waste response trust fund together with appropriated amounts and certain recoveries from persons responsible for the waste sites.

The fund will be available, subject to appropriations, for purposes of emergency response, removal, containment, cleanup, or other action taken under title I of the bill. The trust fund may not be used for purposes other than those specified in title I nor to pay for costs incurred at sites owned or operated by the U.S. Government [Sec. 111(e)(3)]. This is consistent with the provisions reported by the Committee on Interstate and Foreign Commerce. If in the future a proposal is made to expand the scope of this hazardous waste response program, the Committee on Ways and Means would expect to look at that proposed change, after the authorizing committee has made its recommendations, to see if the change is consistent with the general purposes of the fund and further whether sufficient revenues are available or if a tax increase is necessary to pay for the proposed changes. This is only natural because in this bill we are enacting a specific level of taxation to address specific problems.

In this regard, the hazardous waste response program is totally consistent with other trust fund arrangements which have worked smoothly over the years. Such funds include the airport and airway trust fund, the black lung disability trust fund, and inland waterways trust fund, and the highway trust fund. In the past, when the authorizing committees have sought to amend the programs supported by these trust funds, we have worked successfully with those committees.

To assure adequate oversight and governmental participation in the fund, total spending from the trust fund may not exceed 10 times the amount actually appropriated to the fund. In addition, the trust fund may not borrow from the U.S. Government.

Spending from the trust fund will not be permitted after September 30, 1985 unless the fund is extended by the Congress.

The CHAIRMAN. The gentleman from Illinois (Mr. Rostenkowski) has consumed 6 minutes.

The Chair now recognizes the gentleman from New York (Mr. Conable).

Mr. CONABLE. Mr. Chairman, I yield myself 6 minutes.

(Mr. Conable asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Chairman, without going into the bill as a whole, I would like to say that I support the Ways and Means Committee amendment to H.R. 7020 which is contained in title II, the Hazardous Waste Revenue Act of 1980, as it is called.

Title II, as my friend, the gentleman from Illinois, has already described, would impose excise taxes on crude oil, specified petrochemical feedstocks, and specified inorganic substances. The revenues from these excise taxes are to be deposited into a "hazardous waste response trust fund." The fund will be available to finance the containment or cleanup of inactive hazardous waste sites which are causing or threatening to cause harm to the public health and environment **[Secs. 211 and 221]**.

The tax on crude oil is expected to raise $35 million in revenue annually. There is $108 million annually coming from petrochemical feedstocks and $35 million annually coming from inorganic chemicals. The excise taxes will "sunset" the provisions of the law after September 30, 1985.

The trust fund will receive moneys both from excise tax deposits and transfers from general revenues. This has been a matter of some contention in the development of the bill.

Excise tax receipts are intended to make up 75 percent of the fund's total assets, following the Downey amendment in the Committee on Ways and Means, whereas transfers from general revenue will make up 25 percent of the fund's total assets. There was a 50–50 division as it came from the other committee earlier.

As a further safeguard to assure that the general revenue transfers will occur, the bill limits expenditures from the fund to 10 times the amount of general revenues actually appropriated to the fund. That insures, of course, that there will be some public involvement in the creation of this fund, if we are to have any use of it.

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The excise taxes in title II will produce the revenue to support a responsible program to clean up abandoned, hazardous waste sites. The authority to pay for removal and cleanup costs is defined by the provisions currently in subpart C of part 2 of subtitle C of the Solid Waste Disposal Act. This provides a fixed reference point by which to measure the legitimacy of payments from the fund. This is an essential safeguard.

Mr. Chairman, I am not sure exactly what is going to happen to the Florio amendment which was printed in the Record. I hope if it is offered that some accommodation will be made to the section which would in effect open up the purposes for which the trust fund may be spent, make it subject to the sole control of the other committee. The Ways and Means Committee is not terribly enthusiastic about creating trust funds for which the purposes will be defined by someone else, without any review by the Ways and Means Committee. I personally have some resistance to trust funds generally because they impinge on the discretion of the Congress to expend money raised by the Congress according to its unfettered discretion; and clearly, to set up a trust fund which then could be expended in any way which one of the legislative committees saw fit would be to discourage the creation of further trust funds. We should avoid such a precedent.

Mr. **Florio**. Mr. Chairman, will the gentleman yield?

Mr. **Conable**. I yield to the gentleman from New Jersey.

Mr. **Florio**. I thank the gentleman for yielding.

Of course, I can understand the gentleman's concern about the possibility of this scenario occurring which he described. Likewise, as the authorizing committee, we are very much concerned about the Ways and Means Committee perhaps making substantive changes in the provisions of the legislation which relate to programs authorized by the Commerce Committee.

I have been talking with the gentleman from Oregon (Mr. Ullman). We think we have reached an accommodation which perhaps can be read into the Record at the appropriate time, and we are planning on doing that. I think that will resolve the gentleman's apprehensions as well as mine.

Mr. **Conable**. Yes. I call the gentleman's attention to the fact that every trust fund we have set up has the kind of language in it which the gentleman's amendment suggested striking. In other words, whether you are talking about airways safety or the Highway Trust Fund, in general we retain the right to review the purposes for which the money we are asked to raise is spent. And I hope that we will not change that practice, so that the Ways and Means Committee will be expected to raise money generally for whatever purpose the fertile mind of any committee can devise at some time in the future.

The purpose of a trust fund is to have a fairly limited use of the money raised rather than to have it purely discretionary.

Mr. **Florio**. If the gentleman will yield. I am very optimistic that we will be able to work out the difficulties and have it read into the Record.

Mr. **Conable**. That is fine. If we are not going to do that, we ought to go the appropriations route, I think, and have it subject to the safeguards that are usually involved in that practice.

Mr. Chairman, I believe title II contains a responsible and workable approach to financing the cleaning up of abandoned hazardous waste sites. There have been arguments made that we should not put a tax on petrochemical feedstocks, but I think they have been resolved to the satisfaction of everybody concerned.

The **Chairman**. The Chair now recognizes the gentleman from Illinois (Mr. Rostenkowski).

Mr. **Rostenkowski**. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. Weiss).

(Mr. Weiss asked and was given permission to revise and extend his remarks.)

Mr. **Weiss**. Mr. Chairman, I rise in support of the two bills before us today commonly known as the superfund, H.R. 7020, and H.R. 85.

Since the close of World War II, the chemical and petrochemical industries have enjoyed uncomparable growth. Unfortunately, there has not been a parallel development of preventive safeguards against oil and chemical spillages and sites where potentially hazardous wastes are located. Within the last few years almost daily reports of leaking chemical dump sites, oilspills, and other hazardous substance spills appear in the news. The Coast Guard reports that 10,620 spills released a total of 17.6 million gallons of oil in

1977, a year which saw no catastrophic single spill. EPA estimates there are 3,500 spills a year.

In my own State, the department of conservation has listed 680 sites which are known or thought to have received industrial wastes. The most notorious, of course, is the Love Canal site. A total of 157 of these sites are classified as "high priority", that is, posing the most danger to the public's health and the environment.

The Surgeon General has stated:

> It is clear that it is a major and growing health problem. We believe that toxic chemicals are adding to the disease burden of the United States in a significant way.

A report issued just last month by the Library of Congress entitled "A Brief Review of Selective Environmental Contamination" concluded that enough toxic pollutants have been released to have affected every citizen in the Nation. It is apparent that we are practically drowning in our own toxic wastes.

Existing environmental, common, compensatory, and liability laws are not adequate to meet the dangers of existing and potential accidents. The variety of laws and regulations provide little or no relief for cleanup and compensation, limit liability, and provide insufficient funds. EPA Administrator Douglas Costle testified before the Senate Finance Committee that—

> Confronted by these problems we were forced to realize that existing legal authorities are inadequate to deal with them in many ways.

The legislation we consider today, H.R. 85, the Comprehensive Liability and Compensation Act, and H.R. 7020, The Hazardous Waste Sites Act would replace this maze of current laws and regulations. Both bills provide for cleanup of oil and many hazardous substances spills, and hazardous wastes sites, and determine conditions for liability and compensation. The bills establish funds made up of excise taxes on the oil and chemical industries and some Federal moneys. The problem of toxic chemical sites and spills and oil-spills will not disappear with the passage of this legislation. But it will be a first step toward the solution of a problem which endangers the health of every person and the environment in which we live.

Though I support this important first step, these House bills do not adequately address the real danger of chemical wastes and oil-spills. I am hopeful that the other body which is currently conducting hearings on more comprehensive, stronger legislation, will report their bill, S. 1480, intact. S. 1480 includes stronger liability provisions, coverage of toxic releases not only into a navigable body of water, but to land and air as well, provisions for health damages to victims, and a fund of $4 billion.

The critical importance of this legislation cannot be overemphasized. As the Surgeon General's report states—

> The public health risk associated with toxic chemicals will continue to increase * * * until we are successful in controlling the introduction of these chemicals into our environment.

I urge my colleagues to join me in support of this legislation.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. Biaggi).

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, I rise to express my support for immediate passage of H.R. 7020, the Hazardous Waste Containment Act of 1980. Let me state from the outset that my preference as to the best possible legislation would be H.R. 7020 with the Ways and Means amendments attached.

This is the second part of the so-called "superfund" package proposed by the administration. I am the author of the first legislative component of this measure, H.R. 85, the Comprehensive Oil Spill Liability and Compensation Act. This bill is expected to come before the House later today.

The bill H.R. 7020 addresses itself to the proliferating national problem of toxic chemical dumping and release of hazardous wastes from inactive and abandoned sites. The U.S. Surgeon General, Julius Richmond, in what Time magazine this week calls "the most authoritative warning yet," declared that throughout the 1980's, this Nation will confront "a series of environmental emergencies" posed by toxic chemicals that "are adding to the disease burden in a significant, although as yet, not precisely defined way."

This legislation goes after the problem in two sound ways—it proposes a procedure to both identify and take steps to remove poisonous materials from sites, and secondly, it insures that compensation is available for costs incurred by this action.

Let me emphasize this point from the very outset—this issue which we are debating today is a major social and environmental issue. But above all, it is a profoundly human issue. The presence of hazardous chemicals, literally in the backyards of thousands, if not millions of American homes, has evoked a growing national fear for the well-being of our families.

Perhaps the catalyst for this growing sense of uneasiness is the ongoing tragedy of Love Canal. Contaminants from an old landfill loaded with dangerous chemicals at and below surface levels had seeped into a residential area where some 1,200 homes and a school are located. For an inordinate period of time, the complaints of the residents of the area went unheeded by the Federal Government until it finally called for detailed tests of each individual in the area. New York State was finally compensated by the Federal Government earlier this month for costs incurred in relocating the families from the Love Canal area. Estimates indicate that the State of New York has already expended some $35 million on Love Canal and clearly needed help from the Federal Government.

In earlier research I had done on the Love Canal issue, based on materials submitted by the Hooker Chemical Co. which owned the landfill, records indicated that as far back as the late fifties, problems related to the chemical landfill were being reported. In this particular case, the assistant technical supervisor of the school system in the Love Canal area reported the serious burning of four children by materials in the grounds of a school playground which had been deeded to the school. Prior to its use as a playground, the area had stored chemicals which proved to be the source of the children's burns.

Love Canal, N.Y., Elizabeth, N.J., Montague, Mich., Seymour, Ind.—these are all places where the presence of dangerous chemicals pose a serious threat to the health and safety of local residents.

Let us examine the scope of this problem. Based on a 1979 Environmental Protection Agency survey—there are between 30,000 and 50,000 inactive and uncontrolled hazardous waste sites in the United States. Of these, as many as 2,000 present a serious risk to public health. In my home State of New York, there may be as many as 157 high-risk sites posing serious health threats to residents.

H.R. 7020 provides that the owners and operators of chemical dump sites that are not being used, to file reports with appropriate State and local officials detailing the types of chemicals which are stored, the method of waste treatment and storage, and other germane activities **[Sec. 103(c)]**.

Further, States would be required to compile an inventory of chemical dump sites and transmit this information to the EPA. If they fail to do so, the EPA would step in and do the job.

Within 15 months of enactment of this legislation, States must establish priorities among inactive sites in their State using EPA guidelines. Within 6 months of enactment, EPA must establish a national priority list of sites which present a substantial threat of releasing hazardous substances **[Sec. 105(8)]**.

After this, EPA may take emergency action if a dump site presents an unreasonable risk to public health or the environment. If the site is among the top 100 in ranking, EPA could relocate, contain or clean up the materials or take other remedial action to eliminate the hazard **[Sec. 104]**.

These are all-important steps which are common to both bills. The issue of who pays—how the fund will be financed—and liability and enforcement issues—I will discuss during the debate on the Ways and Means Committee substitute.

It is essential that both H.R. 85 and H.R 7020 pass this year. The problem is too severe to overlook—the potential for greater problems in the future is highly possible. It is currently estimated that only 10 percent of some 77 billion pounds of hazardous wastes produced each year are disposed of in an environmentally safe fashion. The unsafe methods range from slipshod to downright dangerous. This bill will protect present and future homeowners by identifying the location of sites which pose a threat to health and safety.

What is most important about this legislation is its offering of first-time protection of the public from the damages and hazards caused by unknown polluters, bankrupt companies, or those who successfully avoid liability. Where are the victims to turn in this case? Are they supposed to simply accept property damage or worse—damage to their health?

The issues appear to be very clear. This Nation has a relatively new, but decidedly dangerous problem on its hands with the presence of chemicals and other hazardous substances in our lands. H.R. 7020 presents the first real legislative remedy to this national problem. It is not a complete answer but an important start. I urge adoption of the strongest version of H.R. 7020 which will demonstrate to the American people that we are committed to promoting a safe and healthy environment for all.

Mr. Rostenkowski. Mr. Chairman, I yield 6 minutes to the gentleman from New York (Mr. Downey).

Mr. Downey. Mr. Chairman, I would like to begin by congratulating both the gentleman from New Jersey and the gentleman from Tennessee for the work that they have done. I want to single out the work of the gentleman from Tennessee, who has a remarkable grasp of this issue. It is my privilege to count him as a friend and to have learned from him on this subject.

Mr. Chairman, I want to explain very briefly what we did in the Ways and Means Committee, because I think we have improved on the good work of the Commerce Committee. Commerce came to us, basically, with a $600 million proposal that was divided equally between Government revenue and the industry. The Ways and Means Committee understood, along with other members of the Commerce Committee, the magnitude of the toxic waste problem.

At a minimum, there are 300 sites that need immediate attention. The cost of providing that attention will range anywhere between $3 million and $4 million, and probably a lot more, and will eat up the entire $1.2 billion. The $1.2 billion is a start. It is not adequate, but I think it represents a reasonable beginning.

So we needed to, right away, increase the size of the fund, and that is what the Ways and Means Committee did.

We next addressed the question of who should pay, and that, of course, centers around who is responsible. And this is a matter of some controversy. Clearly, in those situations where the generator of the waste is clearly identifiable, they should pick up the tab for cleanup. But in those hundreds and possibly thousands of instances where no one can be identified, we have to provide a mechanism for a quick reaction and also for a long-term solution.

The Commerce Committee held 18 hearings, and I think it is fair to say that the large and small chemical companies are responsible for the problem.

Let me just quickly thank the chemical industry for the bounty they have provided us: Polyester, clothing, a whole range of synthetic fibers, chemicals, pharmaceutical changes in our lives that have made our lives more attractive and certainly more comfortable. But with that creativity and that productivity also comes the need to save money; and the industry found, unfortunately, that this is a big country and that it is very cheap to find an abandoned farm and dump these chemicals or have somebody come up with a flatbed truck and for 75 cents a barrel dispose of the chemicals. And that is what happened. It is clear, from the Commerce Committee's work, that the Fortune 500 companies are as responsible and probably more responsible than the small ones.

So what the Ways and Means Committee said was, "We will take 75 percent of the revenue from the industry and 25 percent will come from the taxpayers of this country [Sec. 211]."

Now, something needs to be said with respect to the apportionment between private and public money, because when we say 75-25, that does not take into consideration the fact that this tax, along with all other taxes, is deductible. And if you figure for a large corporation a 40-percent marginal rate, that means that, out of every $75 of tax, about $30 of it is going to be coming back to the various companies, or $30 in addition to the $25 will be picked up by the Federal Government. So it is not a 75-25 split after taxes; it is closer to a 55-45, 55 public, 45 private. I think that is very equitable.

One of the other things that concerns me and concerned the committee is what impact this tax would have on the consumers of chemicals and on the competitive position of the chemical industry abroad.

Now, the Environmental Protection Agency, through one of their studies, did an econometric model that found out that this was such a small tax and it was diffused so carefully and thoroughly through the production chain that it would have no impact on the chemical companies, domestic chemical companies' competitiveness in this country versus foreign companies, and that the cost to the end user, the consumer, would be also negligible. This was something that concerns me.

I asked each of the witnesses who came before the committee to address the question of foreign competition.

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Not one of them said that this would be onerous. Not one of them could point to any competitive disadvantage that this fee would provide. It is miniscule. But this miniscule fee spread out over the various feedstocks will generate the $1.2 billion along with public money that we need to begin this process.

From my community of Long Island, we have had 36 private wells shut down. We, like much of the rest of this country, get our water from glacier aquifers underneath the ground. Two million people on Long Island are potentially at risk because of the hazardous dumping that has gone on over the last 20 years.

So from my community, this is a parochial interest, but for the thousands of others of the sites throughout this country, it becomes not only a parochial, but a national interest.

The Committee on Ways and Means has changed this bill beneficially. I hope that the Members can support it.

Mr. CONABLE. Mr. Chairman, I yield 9 minutes to the distinguished gentleman from Louisiana (Mr. Moore).

(Mr. Moore asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, I thank the gentleman for yielding.

I come from Louisiana, which is one of the biggest producers of chemicals and have a number of chemical plants in my district and also a number of storage chemical sites in my district. I would like to think I have some indication and some awareness of both sides of the issue.

As a matter of fact, I recently went to a meeting with constituents in my district who were suffering from one of these sites and the problems being caused by it.

From my vantage point, I think there are two conclusions I have reached and we have all reached. First, abandoned toxic chemical storage sites are indeed a serious problem, and they do indeed demand the attention of the Congress.

Second, it appears necessary that this is truly an example of where the Federal Government must be involved. I accept that.

There is a third point that is clear to me, that has yet gone unnoticed in this debate that I would like to touch upon. That is the point of the method of payment of moneys into this fund and what I think its eventual impact may be on international trade [Sec. 211].

I am concerned about the arguments that were raised during the debate by members of the Committee on Interstate and Foreign Commerce that this bill essentially causes good chemical companies to pay for mistakes of the bad chemical companies, and the bad chemical companies are riding the backs of the good ones who have tried to obey the law and tried to properly dispose of these toxic chemicals.

While that concerns me as an equitable matter, the real thing I am concerned about, that we have not touched upon, is that of trade.

I am privileged to serve on the Subcommittee on Trade of the Committee on Ways and Means, and I am very concerned that we do not adversely impact our competitive edge in the export of chemicals. I think we should all be aware of the result of excessive taxation and our corresponding industrial inability to compete with foreign producers. We have already seen this as is now painfully evident with shoes, automobiles, television sets, steel and many other items.

Meanwhile, the chemical industry has enjoyed a substantial trade surplus of some $5 billion annually, and without the help of this industry, which is one of the few manufacturing exporters we still have left, our trade deficits would be far worse than they are. Whether one calls it a fee, as the Committee on Interstate and Foreign Commerce bill does, or a tax, as the Committee on Ways and Means amendments properly do, it does not really matter, because in each instance it increases the cost of production with no increased productivity.

The gentleman from New York just mentioned that nobody has complained this is going to be an onerous burden. That is not entirely true, but largely so. But when one considers this new burden with other existing ones and other factors, somewhere in the future it is going to be a problem.

Already the clouds of economic decline are beginning to appear for the chemical industry. Even if H.R. 7020 is not enacted, and even if this fund is not changed as to how it is paid, this industry is going in the future to be squeezed, and squeezed hard, in foreign competition for two reasons.

The first is that crude oil is the basic feedstock of the chemical industry, in particular, the petrochemical industry. It is clear that when crude oil prices are completely decontrolled, the abilities of the chemical companies to market their products in the world market are going to be significantly endangered. Crude oil feedstock costs constitute 20 percent of the cost of the chemical companies' overall operational costs.

Over the last few years the U.S. companies have enjoyed a substantial cost advantage in the world market solely because of the cheaper feedstock costs in this country as compared to European or Japanese chemical companies.

Just as we have seen in the decontrol of oil causing gasoline and heating prices to go up, this is true in the oil feedstock costs as well.

As we phase out the artificial price control program for oil, which I support, we are increasing the cost of doing business of the chemical companies. Foreign chemical companies have had to operate on the world market price of oil for many years now. The Japanese and European companies have not paid an artificially low price for oil like they have in the United States. They have paid the world price. That has largely been the reason we have been able to compete and export chemicals.

The second reason why we are going to have problems in the future in international trade of chemicals is that this industry worldwide is already suffering from overcapacity and underutilization. The U.S. trade advantage in chemicals has been primarily due to our inherent price advantage due to crude oil prices being regulated rather than our superior technology or a world shortage of chemical industry capacity.

Both European countries and Japan, our major industrial trading partners, are welcoming the day when U.S. chemical companies will have to pay the same prices they now have to pay for oil and further, the OPEC countries are beginning to forge ahead to construct additional petrochemical production capacities or expanding the ones that they have in order to be able to take advantage of the United States' lessening ability to compete.

Both the underutilized worldwide capacity and the additional planned capacity of the OPEC countries will most certainly weaken our competitive advantage. With the structure of the fund as it is in this bill, we are now adding a third reason, this new tax or fee on this industry that is already going to face these two other factors in the very near future.

Let me give the Members a specific example of what I fear is going to happen. Metallic nickel and metallic cobalt are covered by this bill. They are not in themselves generally considered to be toxic or hazardous. In fact, as the Members know, we use pure nickel in most of our coins. Any intermediate products produced by a process that purifies nickel ores and cobalt ores are already being regulated in Louisiana and most States under subtitle C, of the Resource Conservation and Recovery Act.

It just so happens that the only pure nickel and cobalt produced in the United States is produced in the State of Louisiana at the Port Nickel facility. This plant supplies 10 percent of the U.S. needs of pure nickel. All of the remaining nickel, the other 90 percent, and cobalt metal is imported from unreliable sources across the world.

With the imposition of this fee or this tax, it is likely that this plant will close and we will then get 100 percent of this material from overseas.

This plant is already in a marginal economic situation mainly from foreign competitive measures, and the parent company is already considering closing this domestic plant and building one overseas. If this plant in Louisiana is closed, we lose 700 jobs. We also lose something we will have to import more of thereby further weakening our trade balance and economy. I figure this will not happen just with this plant, but at some point in the future with additional chemical companies and plants.

Unfortunately, this situation was not learned by me until after this bill was considered by my committee and after a rule was granted by the Committee on Rules which prevents me from offering an amendment when this bill is considered under the 5-minute rule to remove the nickel and cobalt provision from this bill's coverage and the resulting requirement of the payment of the tax.

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Therefore, I feel this bill should be amended to have this adverse trade impact for the future and the present removed, and yet preserve the fund.

I understand the Stockman substitute, which I will support, will accomplish this end.

I will support this bill, even without the passage of this needed amendment, just as I did in committee; but this debate would be neither responsible nor complete without consideration being given to the connection between increased taxes and decreased ability to compete in international trade. We have ignored this point so many times in the past and our economy is today suffering for that reason. We must not do it again.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Texas.

Mr. ECKHARDT. I am rather surprised at the gentleman's statement that the chemical industry is not sufficiently efficient to compete unless it has an advantage price-wise.

I would have thought that if, in the gentleman's State, as in mine, that the chemical industry was able to compete when foreign oil sold during the sixties to European chemical plants at only $2.90, whereas domestic oil was being sold to U.S. plants at about $3.40, the chemical industry could compete when the cost to them and to their European competitors are the same.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

Mr. CONABLE. Mr. Chairman, I yield 1 additional minute to the gentleman from Louisiana (Mr. Moore).

Mr. MOORE. In the 1 additional minute, let me attempt to respond to the gentleman's question, which is a good one and a fair one.

Times have changed since the prices then. Most chemical plants in my State were built back before that time. There are newer ones that have been built that are really more efficient in other parts of the world. Today we can compete. Tomorrow, next year, 5 years from now, when oil is totally decontrolled, we may still be able to compete, but will enjoy less of an advantage than we have now. It is only common sense as the cost of raw materials goes up, so does the cost of the finished product. We are not going to be able to compete as well considering increased capacity overseas, coupled with this burden that we are going to place by virtue of this new fee or tax, and coupled with the increased technologies of foreign countries. We are going to have difficulty in the future.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. MOORE. If I have time, I will certainly yield.

Mr. ECKHARDT. But it was true at the time I am referring to that foreign plants had an absolute advantage in price over American plants the European plants buying oil at around $2.90 per barrel. At that time American plants were paying around $3.40. Certainly our chemical industry should be able to compete when the cost is equal.

The CHAIRMAN. The time of the gentleman from Louisiana has again expired.

ROSTENKOWSKI. Mr. Chairman, I yield 4 minutes to the gentleman from Connecticut (Mr. Moffett).

(Mr. Moffett asked and was given permission to revise and extend his remarks.)

Mr. MOFFETT. Mr. Chairman, occasionally in this debate we have tried to look at some of the human dimensions that are part of the toxic waste problem. I would like to point out, and I think the gentleman from Louisiana (Mr. Moore) and the gentleman from Michigan (Mr. Stockman) must be aware of this, the tremendous and volatile nature of this issue with regard to the population.

There was a 20-minute segment, as I understand it, on a television show called "Speak Up America," last Friday, 1 week ago tonight. It was about this very issue. Perhaps some of my colleagues saw it. Some of us were mentioned on that program. I was one because I had chaired hearings on this matter, and the gentleman from Tennessee (Mr. Gore) because he has been so involved in it, and some others. Just from that one program, that one 20-minute segment, came 130 letters from 28 States.

I see the gentleman from Minnesota (Mr. Stangeland) here. He is a member of our subcommittee. I think he knows from the testimony we have had from around the country that citizens from all geographic regions are deeply concerned about this problem. Here is just one from Tampa, Fla. This is a young mother. She says:

> I am the wife of a hardworking man with a low income.
>
> I know we'll never be rich enough to buy our own home, or land, and we work hard just to maintain a house and feed our two children.
>
> But it breaks my heart and scares my children when we see on T.V. the dumpings of chemical waste that kills the land, rivers, and lakes.
>
> Now we're only 24 years old and my husband and I can't afford to buy even one acre of land, but the rich businessmen of this country are killing the land.
>
> We can't afford to go to football games, or take the kids rollerskating. The only form of family entertainment that we have is camping. We take a tent, some hotdogs and the kids to a lake about 30 miles from home. There's no charge for the camp site. All we have to pay for is the gas to get there.
>
> The four of us love going to the lake. We swim and take walks in the woods.
>
> Please don't let someone kill our lakes and land. Inflation has taken everything we used to enjoy.

Now, that kind of message is very, very common in this group of letters. I do not need to belabor the point because we are all getting this kind of mail. I think that is why we will not have more than 20 or 25 votes against this bill on final passage.

But I think there is another message in these letters. People are begging us not to weaken this bill. If anything, strengthening it with the Gore amendments, strengthen it with the amendment of the gentleman from Texas (Mr. Eckhardt) to provide minimal funding for the study of health effects, something we are not even doing now; but by all means, let us pass the legislation intact, the Ways and Means version with regard to industry contribution.

There is one final point that emerges from these letters. People are willing to pay even more to see that we do not totally destroy this planet.

Mr. CONABLE. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota (Mr. Stangeland).

(Mr. Stangeland asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the serious problem of abandoned and inactive hazardous chemical dump sites throughout the country has been well-documented and requires immediate corrective action by Congress in order to avoid irreparable harm to the environment and public health. National estimates indicate that up to 2,000 dumps may pose grave health hazards to a significant number of our citizens. In my home State of Minnesota, there are seven identified high-risk dumps which ranks Minnesota fifth among all States regarding the number of such high-risk hazardous dumps. A specific example of the pervasiveness of this problem can be found in Perham, Minn., located in my congressional district where 11 people were affected by arsenic poisoning from a small well in the early seventies. Other examples of groundwater contamination and pollution caused by improperly disposed chemicals and hazardous wastes may be found in almost every congressional district in America.

Such incidents graphically demonstrate the need for urgent action by the Congress to pass a strong bill to deal with one of the most serious environmental problems facing America during the 1980's. For these reasons, I rise to express my wholehearted support for the Hazardous Waste Containment Act, as amended by the Ways and Means Committee to increase the size of the cleanup fund to $1.2 billion and call for a 75-percent contribution by industry, with the remaining 25-percent portion coming from the Federal Government **[Secs. 211 and 221]**. In addition to provisions concerning the cleanup fund, this legislation will also provide standards for assessing liability **[Sec. 107]**, establish an inventory of hazardous waste sites, require monitoring of these sites and set up a priority list of the most dangerous dumps that require immediate attention **[Sec. 105(8)]**.

By passing strong "superfund" legislation, Congress has the opportunity to belatedly address the problems of oil and chemical spills and toxic waste disposal. The people of this Nation rightfully demand action now. As elected representatives of the people, we cannot afford to delay implementing a national toxic waste policy any longer. I reiterate my support for the Ways and Means Committee amendment to double the size of the hazardous waste trust fund and increase industry's share to 75 percent. This is desperately needed and is certainly an appropriate area for Federal expenditures.

Mr. ROSTENKOWSKI. Mr Chairman, I yield 1 minute to the gentleman from Missouri (Mr. Volkmer).

(Mr. Volkmer asked and was given permission to revise and extend his remarks.)

Mr. VOLKMER. Mr. Chairman, I, too, rise in support of H.R. 7020 and commend the Committee on Ways and Means, the Commerce Committee, and especially the gentleman from New Jersey (Mr. Florio) for their activities.

Controlling hazardous wastes is one of the most pressing problems currently facing our Nation. The amount of such waste that is generated every day is enormous and the danger it presents to society is great indeed. For too long we have ignored the problem of disposal of hazardous wastes and we are now paying the price for that inattention. Almost daily another clandestine chemical dump is discovered and another threat to our health and the environment is known.

I firmly believe, as do most Americans, that strong Federal action in this area is necessary. A recent survey showed that almost 93 percent of the American public thought that coping with hazardous wastes was a proper role for the Federal Government. The cost of cleanup is enormous, far beyond the capabilities of the average individual and even dwarf the capabilities of most States. In Missouri alone it is estimated that cleanup of known sites could cost up to $100 million. Federal assistance in this area, therefore, is necessary if we are to make our Earth safe again.

I, for one, think that at some point in the future the Federal Government is going to have to take action to prevent placing any more hazardous wastes in the ground. Incineration, recycling and chemical treatment technologies are developing so as to make the goal of isolating hazardous wastes from our environment a reality. We must do whatever we can to expedite the development and utilization of such technologies.

While this legislation does not directly prevent the improper dumping of wastes, I believe that it too is of critical importance. Creation of a superfund will lead to the prompt cleanup of hazardous dumps once discovered and thus will lessen the risk of harm to human beings. Once a dump site is discovered, nothing is more important than protecting the people around that site from its dangers. All too often, however, disputes over fault and liability preclude such rapid cleanup. Creation of the fund will allow prompt cleanup, with resolution of liability questions at a later date [Sec. 107].

Because of the enormity of the problem that hazardous wastes present a large fund will be needed to cope with cleanup. Even a $1.2 billion fund will cover only the tip of the iceberg as far as complete cleanup of all waste sites is concerned. Furthermore, while I understand the claims of the chemical industry that society has benefited from their products and should pay the cost of cleaning up the wastes, I believe that the burden of cleanup must be placed on that industry. Placing the cost of cleanup on waste generating industries will prevent the externalization of costs for products developed by such industries and thus will make it clear to society what the true costs of such products are. Only if such a path is followed will the generation of hazardous wastes be controlled in the future. [Sec. 211]

Lastly, while this bill is primarily a cleanup mechanism, the inclusion of a strong liability section is a step forward. In my mind, imposition of strict standards regarding releases from hazardous waste sites will be a strong deterrent to improper storage of such wastes. The threat of protracted litigation and large financial liability will force waste disposers to implement more stringent safeguards for disposal in the future. **[Sec. 107]**

I applaud the efforts of the gentleman from New Jersey for the fine work he has done on this bill. This is much needed legislation and the country will be better off if it passes.

☐ 1220

Mr. Rostenkowski. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. Ambro).

(Mr. Ambro asked and was given permission to revise and extend his remarks.)

Mr. Ambro. Mr. Chairman, I rise in support of H.R. 7020, as reported by the Ways and Means Committee.

Throughout the United States, ground water is being grossly contaminated by careless, uncontrolled dumping of hazardous wastes produced by a large number of industries. Yet, this same groundwater is the only source of drinking water for many millions of Americans. Residents of my district on Long Island are among those, being totally dependent on aquifers designated as "sole-source" by the U.S. Government in 1978. Sadly, these aquifers are already contaminated in some places and face further serious and long-term contamination by enormous amounts of hazardous chemicals which have been dumped for decades by uncaring industries in so-called sanitary landfills and in recently discovered dumpsites on industrial properties owned by these industries.

The dimensions of this threat have been delineated by a recent comprehensive report painstakingly compiled by the Toxic Chemicals Project of the New York Public Interest Research Group, Inc. released July 1980, entitled "Toxics on Tap," which is included. This report documents an alarming array of cases of hazardous waste dumping in disposal sites located mostly in the marainal spine of the island, which is the primary recharge zone of the aquifer system. Notable among the cases documented is long-term, continuous dumping of industrial wastes by the infamous Hooker Chemicals & Plastics Corp. In 1978 alone, Hooker dumped more than 1,600,000 pounds of industrial wastes in the Old Bethpage landfill in Nassau County. Despite Hooker's knowledge that these wastes were largely hazardous and constitute a threat to human health as they leach into the ground water supply, there was no surveillance by the corporation of the site.

Although the worst offender on Long Island and throughout the Nation, Hooker is by no means alone. With few exceptions, the chemical industry as a whole has been guilty of a callous disregard for the health and very lives of citizens into whose ground water supplies they have dumped all manner of noxious substances.

Until recently, these same industrial polluters were asking this body to vote down a measure which will require them to assume a part of the fiscal burden of cleaning up the heritage of their blatant disregard for the health and safety of the citizens of this Nation. For us in this House to heed the erstwhile pleas of these magnates of pollution and vote against this bill which properly places part of the burden on those who created this problem in the first place, would be to display an arrogant disregard for the lives of our constituents at least as callous as the actions and attitudes of the polluters themselves.

Mr. Chairman, I urge passage of the bill, H.R. 7020, and urgently request that my colleagues support the comprehensive approach offered us by the Committee on Ways and Means.

The report follows:

NASSAU COUNTY ON-SITE LANDFILLS

The Cerro Wire and Cable Company located in Syosset, N.W. has three dumps on the ground of its Robbins Lane plan. None has been investigated thoroughly. Nevertheless, they are a major potential source of contamination, particularly heavy metal pollution. Cerro has been known to landfill highly toxic industrial sludges containing iron nickel, chromium, copper, cadmium, lead, and zinc at the Syosset municipal landfill adjacent to its property. It is possible that similar wastes are buried on-site. For a description of the manufacturing processes used at this plant and a discussion of the kinds of hazardous waste they generate, refer to the State Pollutant Discharge Elimination System permit program section of this report. Refer also to the profile of the Syosset municipal landfill.

Grumman Aerospace Corporation in Bethpage, New York has operated an on-site dump since 1945. There has been no study investigating the problem of toxics leaching from this landfill. Nevertheless, the potential for intense groundwater contamination exists. The manufacture of aircraft equipment typically utilizes a wide variety of toxic compounds and generates many toxic wastes. Moreover, this plant's wastewater has been designated as a principal toxic discharge both for heavy metals and oganic compounds.

The Hooker Chemical and Plastics Corporation operated at least four dumps at its New South road plant site in Hicksville, New York. Three were used between 1955 and 1974; the other dump's period of activity is unknown. These dumps, and the plant site in general, hold massive amounts of extremely toxic and carcinogenic materials. Consequently, they are a major source of groundwater pollution. Because of Hooker's involvement with investigations and lawsuits, specific information is available detailing the types and quantities of compounds landfilled on-site at its Long Island facility.

The Hooker Chemical and Plastics Corporation-Ruco Division's plant in Hicksville is a manufacturing operation characterized by Standard Industrial Classification (SIC) codes: 282 (plastics, materials and synthetic resins, synthetic rubber, synthetic and other manmade fibers, except glass), and 286 (industrial organic chemicals). From the data presented in appendix A, there is no doubt that these SIC industries generate many toxic and persistent wastes. The plant produces or has produced: polyesters, polyvinyl chloride (PVC) compounds, plasticizers, and polyurethanes through the industrial processes of esterification, polymerization, dry blending, pelletizing, and emulsification. Raw materials required for these processes include, but may not be limited to: organic dibasic acids, aliphatic alcohols, polyvinyl chloride resins, resin stabilizers and lubricants, diisocyanates, pigments, fatty acids, antioxidants, aromatic solvents, catalysts and water. The industrial wastes generated by the plant include, but again, may not be limited to: solvent flushes, latex flushes, filter cake, aqueous organics, resin dusts, boiler room runoff, tar heels, chemical packaging, a variety of laboratory chemicals, strip glycols waste, sludges and waste lube oil. Much of the hazardous wastes were landfilled in local dumps. The details of that disposal method are discussed in the profiles of individual sites. However, a great deal of hazardous waste was also buried or discharged on-site.

Any large industrial plant handling raw chemicals in bulk inevitably has spills, accidential releases, and leaks. Over a long period of time significant problems can develop. During the years 1951-1978, when the Ester plant was in operation, its truck loading areas became heavily contaminated with several toxic chemicals. Finished plasticizer and raw material alcohol leaked from blownout truck lines and plant-bulk lines; these compounds included styrenebutadiene latex. Occasional tank overflows in this area have also been documented. Because for many years the area was not diked, rainfall caused direct leaching of the compounds. Also they were washed into the nearby backsump. The same kind of plasticizer contamination occurred at the East Rear Plant 1 trucking area.

There is also documented evidence of periodic spills of PCBs (polychlorinated biphenyls) at the plant. The Hicksville Pilot Plant therminol system originally used PCB therminol. Occasionally the system would malfunction, resulting in the discharge of PCB's from a relief pipe onto the ground. PCB's are extremely toxic and potentially carcinogenic chemicals. They are also among the most stable compounds known, with a half-life of more than 50 years. Released into the groundwater system, PCB's could eventually cause widespread contamination.

Before hundreds of drums of aqueous organic waste and filter cake were removed from the plant site, they were stored outdoors for long periods of time. This took place in two major holding areas north and south of Plant 2. Exposure to the elements, combined with the corrosive qualities of some of the drummed wastes, perforated many of the containers. Wastes which were released included: 2-ethyl-hexanol, perchloroethylene, waste plasticizer, solution urethane, dimethylformamide, methylethylketone, toluene and isopropyl alcohol.

These leaking drums of highly toxic compounds are a major source of air pollution and groundwater contamination. For example, perchloroethylene was shown to be carcinogenic in a 1977 National Cancer Institute study. Moreover, when perchloroethylene reacts with other pollutants in air, it can break down to form the World War I chemical warfare agent phosgene. Phosgene exceeds the toxicity of chlorine gas ten-fold. Other documented waste releases were also hazardous. Dimethylformamide is exceptionally toxic; it is also specifically fetal toxic. It must also be noted that mixing together many kinds of toxic chemicals is capable of producing other compounds of unknown toxicity.

The plant's tower water system and main boiler are both sources of toxic pollution. Industrial cooling systems are frequently purged during operation. The effluents that result from "blow downs" are contaminated with a variety of treatment chemicals, such as algicides and anti-corrosion compounds. Hooker's first cooling tower was installed in 1956; four years later a second system went on-line. For the first twelve years of operation an extremely toxic anti-algae additive, potassium dichromate, was used. By 1968 regulatory pressure forced Hooker to switch to other treatment chemicals.

On the average over 10,000 gallons of "blow downs" per day and 3,600,000 gallons per year have flowed to the Pilot Plant sump. This discharge is known to have contained the following toxic additives: silicate, sodium hydroxide, hexametaphosphate, sodium salt of nitrilotriactic acid, sodium lignosulfate, polyacrilate, phosphonate, zinc sulfate, Derma Brown G dye, diethylaminoethanol, hydrazine, sodium sulfite, disodium alginate, and minimal sodium salt of pentachlorophenol. The recharge or leaching of these compounds into the groundwater system is a significant pollution problem.

A variety of bulk toxic compounds have been buried on the plant site. They are major potential sources of pollution. In 1974, for example, three latex storage tanks containing solidified latex were filled with sand and buried between the plant's parking lot and the railroad right-of-way. Around 1962, a trailer truck with heavy encrustrations of solid styrene-butadiene latex was buried between the Plant 2 solvent tank farm and the polyvinyl chloride catalyst cold room. Neither site has been monitored for contamination problems.

Beginning in 1951 vast volumes of wastewater contaminated with carcinogenic and otherwise highly toxic materials were discharged into sand sumps on the plant's property. This direct recharge of pollution could potentially cause heavy deterioration of groundwater quality below the plant site.

Starting in 1951 four ester reactors were put into operation. These produced a wide variety of compounds, including: trimellitate, phthalate, and adipate plasticizers, maleate esters, fumarate esters, polyesters, caprylates, and pelargonates. These industrial processes generated huge volumes of highly polluted wastewater which typically contained 1 percent to 10 percent of mixed alcohols and glycols such as: 2-ethylhexanol, diethylene glycol, and ethylene glycol. It also contained significant quantities of organic acids, such as isophthalic, phthalic trimellitic, and adipic, as well as methanol and perchloroethylene. All of these compounds have toxic pollution potential.

Between 1951 and 1978 ester production increased from five million pounds per year to 26 million pounds per year. A conservative estimate of the pollution loads generated equals 50,000 pounds of organic wastes annually in the early years and 250,000 pounds annually towards the end. Until 1974 all these wastes were dumped directly into the Ester Plant sand sump. Recharge and leaching of wastes has not been monitored.

The toxicities of the various compounds used, produced and discharged by the Ester Plant are, in general, extremely hazardous. Trimellitate plasticizers, for example, were produced by reacting trimellitic anhydride with alcohols, such as 2-ethylhexanol. Trimellitic anhydride has been designated as an extremely toxic agent in the workplace by the National Institute of Occupational Safety and Health. Exposure to the compound can result in irritation of the pulmonary tract, noncardiac pulmonary edema, and immunological sensitization. Maleic anhydride is another highly toxic raw material whose vapors are extremely irritating. As has been described previously, perchloroethylene is potentially carcinogenic. The overall toxicity of these compounds and others that may have been formed inadvertently by the combined dumping practice is unknown.

Wastewater discharges from other production lines were also fed directly into groundwater sumps. Between 1956 and 1975 a polyvinyl chloride resin facility manufactured approximately ten million pounds per year of vinyl chloride homopolymer and vinyl chloride/vinyl acetate copolymer. The wastewater from this process contained approximately 0.1 per cent polyvinyl chloride resin solids, 600–1200 mg/l vinyl chloride, methocel, gelatin, cadium and barium soaps in mineral spirits, trichloroethylene and high levels of vinyl acetate. The average annual discharge volume per year totalled 2,000,000 gallons; all of it was dumped into sand sumps. For the 19 year term of operation this equals nearly 38,000,000 gallons of heavily polluted wastewater discharged directly into the aquifier system below the plant site.

This massive release of toxic pollution is potentially devastating. A conservative estimate of the vinyl chloride fed into the sand sumps totals approximately 380,000 pounds. This compound is an extremely potent carcinogen, known to cause liver cancer in humans. It also causes Acroosteolysis, a degenerative disease of fingertip and hand bones. The other compounds are also highly toxic. Yet no regular surveillance of these sumps has been made. In all likelihood this is a major source of past and present groundwater pollution.

For 15 years between 1956 and 1975, one and sometimes two reactors produced styrene-butadiene latex. Their wastewaters contained styrene condensate, butadiene and rosin acid soaps. The entire discharge was disposed of on-site in sand sumps, generating another obvious source of groundwater pollution.

In short, the toxic manufacturing wastes that were landfilled and discharged on this site have created a massive potential contamination problem. Some of the deadliest and most non-biodegradable compounds known to science have been discharged directly into the aquifer system. Unquestionably, the potential for long-term leaching of toxic compounds also exists. The full magnitude of the problem is uncertain, however. Much data concerning the precise amounts and toxic qualities of on-site wastes is unavailable to the public. Before a precise determination of the area's hazard can be made, this information must be reviewed.

Eleven other industries in Nassau and Suffolk are known to be operating or to have operated on-site landfills. To date, a comprehensive study of the potential groundwater problems at each site has not been made. Nevertheless, there is presumptive evidence that most of the industries generate toxic compounds.

Liberty Industrial Finishing, located at Motor Avenue in Farmingdale, New York, operates a factory engaged in electroplating, plating, polishing, anodizing, and coloring, according to its 3471 Standard Industrial Classification code. This kind of manufacturing process is certain to generate toxic heavy metal sludges and organic chemical wastes. Its State Pollutant Discharge Elimination System permit designates it as a principal toxic discharge of heavy metals and organics.

Mergenthaler Linotype, located on Mergenthaler Drive in Plainview, New York operates a diversified machinery factory that is likely to generate a variety of toxic wastes, according to its 3553, 3573, and 3861 Standard Industrial Classification codes. Refer to Appendix A for a description of typical pollutants in 3861 Classified industrial wastewaters. The plant makes woodworking machinery, electronic computing equipment and photographic equipment and supplies. The wastewater discharge from this facility is regulated by the State Pollutant Discharge Elimination System permit program for toxic heavy metals and organic chemicals.

Servo Corporation of America, located at 111 New South Road in Hicksville, New York, operates an optical instruments and lens manufacturing business. According to its 3832 Standard Industrial Classification code, this plant is likely to generate a variety of hazardous wastes. Its wastewater discharge is regulated by the State Pollutant Discharge Elimination System permit program for toxic heavy metals. Two other industries in Nassau County operate on-site dumps for which there is little information: Mattiace Chemical, located in Glenwood Landing and Photocircuits, located on Sea Cliff Avenue in Glen Cove. Both are potential sources of organic chemical wastes or heavy metal sludges.

SUFFOLK COUNTY ON-SITE LANDFILLS

At least six industries in Suffolk County are known to operate or to have operated on-site hazardous waste landfills. No comprehensive pollution study has been made of any of these sites. Nevertheless, there is reason to believe that they all are potential sources of groundwater contamination.

Dayton T. Brown Inc., located on Church St. in Bohemia, New York, operates two dumps on its property. According to its 3444 Standard Industrial Classification number, this sheet metal plant is certain to generate toxic wastes. Its State Pollutant Discharge Elimination System permit characterizes it as a principal discharger of toxic heavy metals and organic chemicals.

Deutsch Relays, Inc., located at 65 Daly in East Northport, New York, has an on-site dump. According to its 3679 Standard Industrial Classification number, this plant generates toxic wastes. Appendix A details the pollutants that probably are in the wastewater discharge of this facility. Its State Pollutant Discharge Elimination System permit characterizes it as a principle discharge of toxic heavy metals and organic chemicals.

Fairchild Republic Aircraft Company, located at Broad Hollow Road in Farmingdale, New York, has a dump on its plant property. As a large manufacturer of aircraft engines and engine parts, according to its 3724 Standard Industrial Classification number, this plant is certain to generate toxic wastes. Its State Pollutant Discharge Elimination System permit characterizes the factory as a principle discharger of toxic heavy metals.

Jameco Industries, Inc., located at 248 Wyandach Ave. in Wyandach, New York, has two dumps on its property. This plant manufactures a wide range of electrical and metal products. According to the following Standard Industrial Classification numbers, the facility produces: 3599-machinery and parts except electrical, not elsewhere classified; 3432-plumbing fixture fittings and trim (brass goods); 3629-electrical industrial apparatus, not elsewhere classified. All these industrial processes generate toxic wastes. The facility's State Pollutant Discharge Eliminations System permit characterizes the plant as a principal wastewater discharger of toxic heavy metals and organic chemicals.

Two other Suffolk County industries have on-site dumps. Hazeltine Corporation on Cuba Hill Road in Greenlawn, New York, has a single landfill. Edwin B. Stimpson, located at 900 Sylvan Avenue in Bayport, New York, has two landfills. The pollution potential of these sites is unknown.

NASSAU COUNTY NON-INDUSTRIAL LANDFILLS

Table I outlines non-industrial landfills in Nassau County. Three landfills in Nassau County have received combined industrial, municipal, and hazardous wastes. They are Old Bethpage, North Hempstead, and Syosset municipal landfills.

The Town of North Hempstead landfill, at Denton Avenue in New Hyde Park received primarily incinerator residues while it was active from 1951 to 1974. This site has not been comprehensively studied as a source of groundwater contamination.

The Old Bethpage Landfill, located at Winding Road and Sweet Hollow Road in Old Bethpage, New York, has been in operation since 1957. For ten years, this dump was the primary landfill used by the Hooker Chemicals and Plastics Corporation/RUCO Division plant in Hicksville. During that time, it became one of the greatest hazards to environmental and groundwater quality on Long Island.

According to an internal Hooker memo prepared in the days immediately following the Love Canal emergency, the Bethpage Municipal Landfill was described as follows:

Used by Hooker plant since 1968 for disposal of our liquid and solid wastes including: drums of waste filter cake (mixture of celite, decolorizing carbon, spent toluene sulfonic acid catalyst, bicarbonate, trimellitate plasticizer, traces of free 2-ethylhexanol); drums of solution urethane wastes (urethane polymer; solvents such as toluene, DMF, MEK isopropyl alcohol); waste alcohol and glycol "strips" (mixture of 2-ethylhexanol and other similar alcohols, glycols such as ethylene glycol, perchloroethylene). Also some PCB therminol wastes, urethane latex wastewater. Also solid waste such as emptied TMA bags, emptied adipic bags, emptied phthalic bags, thousands of wound cartridge filter elements filled with polyester. Also pallets PVC floor sweeps, pallets, cardboard boxes, vinyl compound floor sweepings, PVC sump scrapings (containing PVC, vinyl chloride, vinyl acetate, trichloroethylene, barium and cadmium soap stabilizers), drums, urethane latex coagulum, TPU waste, waste organic heels in drums including polyester, solution urethane, monoester. Also spent lube oils (300 gallons/year).

Time of use 1968–1978. At maximum use (1978) we are putting out an estimated 1,600,000 lbs. per year mixed wastes, solid plus liquid, into the Bethpage municipal landfill.

No segregation at this municipal dump. No surveillance by Hooker.

TABLE 1.—NASSAU COUNTY LANDFILLS AND COMPOSTING SITES

Town: Nassau County Health Department I.D.	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
Hempstead:					
108	30S02	Garden City (landfill and compost), Cherry Valley Rd.—Incinerator residue.	X		12.0
114		Hempstead Village, Coes Neck Rd., Baldwin—Incinerator residue.		X	100.0
120		Lynbrook, Ocean Ave.—All	X	(Old dump) compost.	3.0
123	30S11	Warren Bros. (private), Coes Neck Rd., Baldwin—Rubble.		X (1976)	32.0
131	30S06	Oceanside, Long Beach Rd.—Mixed municipal	X		198.0
132	30S05	Merrick, Merrick Rd.—Mixed municipal	X		168.0
140		Valley Stream State Park, Brush and trash	X		
141	30S03	Hempstead Lake State Park, Brush and trash	X		2.0
142	30S04	Jones Beach State Park, Brush and trash	X		4.0
143	30S18	Roosevelt Raceway, Trash and agricultural	X		.5
144		Lawrence		(Old dump) X (1950) compost.	
145		Sanitary District No. 1, Bay Blvd., Inwood—Incinerator residue.	X	Transfer station	5.0
146		Freeport, Albany Ave., Freeport—Incinerator residue.	X	Transfer station (1965).	50.0
		Valley Stream No. 1, 200 Arlington Ave		X (1949)	
		Valley Stream No. 2, Hungry Harbor Rd		X (1962)	
North Hempstead:					
310		Denton Ave. (New Hyde Park), Denton Ave.—Incinerator residue.		Transfer station (1974).	37.0
315	30S09	Mineola, Westbury Ave. and 2d St.—Rubbish/demolition.	X		21.0
316	30S08	Nassau County DPW, West Shore Rd.—Grass and leaves.			25.0
321		Great Neck Estates		X Compost	
333		Roslyn L-1, West Shore Rd.—Incinerator residue.		X (1974)	23.0
334		Roslyn L-2, West Shore Rd.—Incinerator residue.		X (1972)	8.0
335		Roslyn L-3, West Shore Rd.—Incinerator residue.		X (1972)	7.0
336		TNH L-4 (lined with PVC), West Shore Rd.—Mixed municipal.	X		53.0
	30S10	Port Washington, Port Washington	X		
Oyster Bay:					
211		Glen Cove		Transfer station	
217	30S14	NYS Planting Fields, Brookville—Agricultural	X		1.0
222	30S12	AGO (Private), West John St., Hicksville—Rubble.	X		10.0
224	30S13	Garvies Point, Glen Cove—Sewage grit		X (1976)	1.0
225	30S15	Old Bethpage, Winding Rd.—Mixed municipal	X		50.0
226		Plainview		Proposed	65.0
227	30S01	Duffy Ave., Wantagh Pkwy., and Country Rd.—Agricultural.			5.0
228	30S19	Beechwood, Old Tappan Rd.—Agricultural			3.0

TABLE 1.—NASSAU COUNTY LANDFILLS AND COMPOSTING SITES—Continued

Town: Nassau County Health Department I.D.	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
229		Bethpage State Park—Agricultural	X		2.0
230		Syosset, Miller Place—Industrial wastes, mixed municipal.		X (1975) compost.	50.0

Source: New York State Department of Environmental Conservation, Region I Resource Conservation and Recovery Act Inventory, Nassau-Suffolk Regional Planning Board 208-K Study.

According to 1978 calculations over 800,000 pounds per year of industrial waste was dumped by Hooker at this site. Approximately 60 percent of that material are the following chemicals:

	Pounds per year
Trimellitic anhydride	10,000
Adipic acid	27,000
Phthalic anhydride	300
Isophthalic anhydride	1,000
Maleic anhydride	1,000
PVC	400
Kane Ace	7,000
26TM and other plasticizers	240,000
Polyester	7,600
Speedi-Dri mixed organics	16,000
PVC compounds (90 percent PVC by content)	165,000
Spent lube oil	3,000
Total	478,300

A description of the individual processes used to generate these wastes and the toxic effects of the individual compounds is found in the Hooker Hicksville plant profile in the hazardous waste section of this report.

The landfill is not designed in any way to prevent the recharged or leaching of toxic pollutants. Consequently, this landfill represents a severe environmental hazard. Toxic chemical groundwater contamination is not monitored at the site. Other industries may also have discharged toxic wastes at this dump.

The Syosset municipal landfill was operated by the Town of Oyster Bay between 1936 and 1975. During that time, vast amounts of toxic and hazardous waste were landfilled there. In fact, the site holds such huge volumes of deadly chemicals that it must be considered at this time as one of the most potentially devastating sources of toxic pollution on Long Island.

The landfill occupies approximately 40 acres of land on a site immediately north of the Long Island Expressway. It is bounded on the south by Miller Place, by Cerro Wire and Cable Corporation to the southwest, by the Long Island Railroad to the west, and by a large residential neighborhood to the north and east. An abandoned incinerator and an unused sludge processing unit are located on-site. Over 4,000 people live in 1,200 suburban homes located within 1.25 mile radius of the dump. Within 100 feet of its eastern border there are two schools. Furthermore, in excess of 300,000 people per day are calculated to be potentially affected by the dump as they pass within 150 feet of it on the Long Island Expressway. Beneath the landfill at a depth 70 feet, lies the groundwater table and 5,000 feet away are drinking water supply wells for the adjacent town of Syosset where over 40,000 people reside.

A staggering volume of wastes was dumped into this landfill. Hundreds of millions of pounds of domestically-generated waste, septic tank sludges, and hazardous wastes are buried in this site. Septic tank sludges, for example, were disposed of in the landfill for twenty eight years at a rate of approximately 18,250,000 gallons per year. These wastes were dumped into an open pit. In 1967, this practice was finally halted when a sludge processing unit went into use. The analysis data presented in Table II indicate processed sludge contained high levels of lead, chloride, phenols, iron, zinc, copper, and chromium. All of these toxic compounds have significant pollution potential.

TABLE II.—TOWN OF OYSTER BAY SCAVENGER WASTE TREATMENT PLANT EFFLUENT ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT

Constituent	Plant effluent		Filtrate
	Mar. 5, 1974	June 26, 1974	Mar. 5, 1974[2]
pH	11.2	9.6	
Manganese	.10	<.05	0.468
Iron	1.46	.62	49.2
Chloride	260.0		
Total dissolved solids		2,082	
Chromium (total)	.04	2.34	3.18
Chromium (hexavalent)	<.01	2.17	
Silver	<.05		.6
Copper	.18	1.10	22.8
Zinc	.37	3.20	18.0
Lead	.13	.04	.288
Cadmium	<.005	<.005	.6
Phenols	.296	.2	
Sulfate	50		
Cyanide	.003	<.007	
Nickel	.24	.29	2.8
Mercury		<.0005	.0012

[1] This shows the metal constituents in the plant and filtrate effluent. Significant are the pH, TDS, chromium (total and hexavalent), copper, zinc, and phenols.

[2] Analyses performed by New York State Department of Health.

Sometime during the late 1940's or early 1950's, the Cerro Wire and Cable Corporation began disposing of highly toxic and concentrated sludges at the dump, at a rate of approximately 670,000 pounds per year. This practice has never been studied in detail, but there is reason to conclude that these industrial wastes are a major pollution hazard. Table III indicates that extremely high concentrations of toxic heavy metals were found in the sludges Cerro Wire and Cable Corporation dumped. These wastes are capable of migrating within groundwater systems and causing widespread pollution problems. Refer to the profiles on Cerro Wire and Cable Corporation in the hazardous waste dump section of this chapter and the State Pollutant Discharge Elimination System direct discharge chapter for a description of the plant's industrial processes and the toxic effects of pollutants they are known to, or are likely to, discharge.

TABLE III.—*Cerro Wire and Cable Corp. industrial sludge analysis*[1]

(By Nassau County Health Department—Date of analysis: Oct. 8, 1974)

Constituent:	*Value*[2]
Solids (in percent)	20.3
Moisture (in percent)	79.7
Volatiles (in percent)	17.9
Iron (total)	45,000.0
Copper	32,000.0
Zinc	95,000.0
Lead	1,800.0
Cadmium	5.5
Chromium (total)	212.5
Nickel	35.0

[1] These analyses indicate the significant amount of metals present in the sludge from Cerro Wire and Cable Corporation.

[2] All values are expressed as mg/kg unless otherwise noted.

Columbia Corrugated Container Corporation is also known to have discharged hazardous wastes at this site. Table IV indicates that its sludge was also highly contaminated with heavy metals, though the levels are uniformly below the levels of pollutants in Cerro Wire and Cable Corporation's wastes. An estimated 108,000 gallons per day were dumped. These contaminated sludges are a major source of potential groundwater pollution. For a discussion of the industrial processes used at this plant, refer to its profile in the State Pollutant Discharge Elimination System direct discharger chapter.

TABLE IV.—COLUMBIA CORRUGATED CONTAINER CORP., INDUSTRIAL SLUDGE ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT

Constituent	Date of analysis		
	Dec. 5, 1974		Jan. 13, 1975, dried sample[2]
	Dried sample	Liquid sample	
Chromium (total	22.0	3.1	42.1
Copper	126.0	1.77	59.4
Cadmium	2.5	.07	.58
Nickel	9.5	.17	2.3
Zinc	58.0	3.2	88.8
Lead	300.0	15.2	277.0
Iron	336.0	16.6	265.0
Titanium			115.0
Manganese			1.15
Magnesium			19.6

[1] This represents the relative contribution of sludge from Columbia on the Syosset site. Concentrations are much lower than those from Cerro.
[2] Analyses performed by consultant for Columbia.

Note: Dried samples expressed as mg/kg. Liquid sample expressed as mg/1.

The largest quantity of hazardous wastes discharged in the Syosset Municipal landfill came from the Hooker Chemcials and Plastics/RUCO Division plant in Hicksville, New York. This landfill was used exclusively by Hooker for hazardous wastes disposal during the period 1946-1968. The same internal Hooker memo that characterized the Old Bethpage site described the syosset landfill in this way:

Over the period 1946-1968, Hickville Plant sent any and all solid and liquid waste in drum quantities to this facility. Also tank trucks of Ester Plant wastes from our concrete pits (alcohols, glycols, perchloroethylene, latex waste material and SBR).

Drummed waste would include alcohol/water/perchlor, purified latex, coagulated latex, alum, filter cake, PVC sludge, PVC floor scrapings, and reactor scrapings, vinyl chloride recovery still bottoms, spent lube oils, about 300 gallons/year, and waste PCB therminol waste. Also drums of waste alcohol and glycol "strips" (mixture of 2-ethylhexanol and other similar alcohols, glycols such as ethylene glycol, perchloroethylene). Also some PCB therminol wastes. Solid wastes including 55 gallon drums, 5 gallon pails, pallets, 50 lb. bags, gaylords, cardboard drums, cheesecloth with latex coagulum, emptied PVC bags, emptied TMA bags, emptied adipic bags, emptied phthalic bags, emptied maleic bags. Also drums of waste filter cake (mixture of celite, decolorizing carbon, spent toluene solfonic acid catalyst, bicarbonate, and trimellitate plasticizer). Also pallets, cardboard boxes, vinyl compound floor sweepings. Also PVC sump scrapings (combined PVC, vinyl chloride, vinyl acetate, trichloroethylene, barium and cadmium soap stabilizers). Also organic heels in drums.

Time of use of this municipal dump facility 1946-1968. Use was lower until 1952-1955 and then heavier thereafter. At maximum output we disposed of in estimated 800,000 lbs./year of total solid and liquid waste. This includes 10,000 gallons/year liquid waste (in bulk) from our annual pumpout of our concrete pits. Solids were trucked away by our own licensed dump truck. Liquid wastes (10,000 gallons per year) were hauled away by McGuinnigle. We discontinued using the Syosset dump in 1968. We use no surveillance or testing on the dump.

We had several complaints from the municipal operations' personnel regarding our materials: messiness from broken SBR latex drums; acidic odors from acetic acid wastes.

There was no segregation at the Syosset landfill of Hooker wastes from other wastes. The landfill personnel did segregate liquid from solid wastes in two general areas of the dump.

Refer to the Hicksville plant's hazardous waste profile for a description of the manufacturing processes that generated these wastes and a summary of the toxic effects some of them are capable of producing.

The Syosset Municipal Landfill is a huge source of potential environmental contamination. There is no doubt that massive amounts of extremely carcinogenic and otherwise toxic pollutants have been disposed of unsafely in this dump. Table V indicates extremely high levels of toxic heavy metals are present in the landfill. These pollutants are capable of migrating through the groundwater system. There is evidence that groundwater contamination has already developed from the leaching of some of these toxic compounds. Whether widespread pollution is taking place is uncertain, due to the total absence of adequate monitoring at the site. Consequently, the full range of problems this dump poses to public health and the environment remains a mystery.

TABLE V.—SYOSSET LANDFILL, TOWN OF OYSTER BAY INDUSTRIAL SLUDGE ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT, AUG. 14, 1974

Constituent	Values[2]			
	Sample 2	Sample 3	Sample 4	Sample 5
Moisture (percent)	23.9	51.0	68.0	32.3
Volatiles (percent)	26.9	27.0	26.4	33.1
Solids (percent)	76.1	49.0	32.0	67.7
Iron	41,000	69,000	73,700	71,500
Copper	45,750	17,600	44,500	27,400
Zinc	90,000	130,000	105,000	105,000
Lead	3,190	3,885	3,830	7,260
Cadmium	6.40	6.35	10.75	8.05
Chromium	335	225	225	295
Nickel	45.5	46.0	51.0	52.0

[1] Sludge samples collected at 4 locations on the Syosset site indicate significantly high concentrations of iron, copper, zinc, lead, cadmium, chromium, and nickel. The sampling locations are in the area primarily used by Cerro Wire & Cable Corp.

[2] All values are expressed as mg/kg unless otherwise noted.

Only three critical facts are not in doubt: 1) The dump is located precisely in the deep recharge zone of the Long Island aquifer system. Consequently pollution discharged from the landfill would cause a maximum amount of irreparable damage to the water supply. 2) While the dump is known to hold massive amounts of some of the deadliest substances known to exist, a comprehensive study of its environmental impact has never been made. 3) Unless the landfill is made secure, environmental contamination will increase in the future. The health of hundreds of thousands of people could be affected. In conclusion, the securing of this dump must immediately become a top environmental priority for the Long Island community.

SUFFOLK COUNTY NON-INDUSTRIAL LANDFILLS

Table VI outlines the non-industrial landfills in Suffolk County. Many landfills in Suffolk County are also sources of potential toxic chemical groundwater contamination. Unfortunately, data detailing the types and quantities of industrial and hazardous wastes landfilled in Suffolk County dumps is presently unavailable. However, groundwater contamination caused by two landfills in Suffolk County has been studied jointly by the United States Geological Survey and the Suffolk County Department of Environmental Control. The Babylon landfill, in operation since 1947, is the primary refuse disposal site for approximately 200,000 people. The landfill covered 125 acres and contained an estimated 2.3 million cubic yards of refuse as of 1973. Combustible waste has been incinerated at this site since it began operation. From 1968 to 1972, this amounted to an average of 368 tons per day. Non-combustible solid waste is dumped directly into the landfill. Scavenger waste from pumped out septic tanks has also been disposed of in vast amounts at this site since 1966. Though an accurate assessment of the total amount discharged into the dump has not been made, in 1972, an average of 40,000 gallons per day were handled. Scavenger waste has also been dumped directly on top of the huge rubbish piles.

The plume of leachate extending from the dump has been traced in the Upper Glacial aquifer. From a point at the earliest pile of rubbish, located in the northwest corner of the site, a tongue-shaped plume flows southward over 10,000 feet. It is approximately 2,000 feet wide at the landfill and tapers toward its southern tip. The plume is 70 feet deep and occupies the full thickness of the Upper Glacial aquifer. It contains an estimated 2 billion gallons of contaminated water.

The second landfill that was studied is the Town of Islip dump, located in Sayville. This landfill is one of three sites used to dispose of solid waste generated by a local population of 290,000 people. It holds an estimated 0.8 million cubic yards of material. The site was originally a sand and gravel pit. Refuse presently extends from the bottom of the pit, located 30 feet below the land surface, to an approximate height of 16 feet above land. In 1973, refuse covered 17 acres. This dump is known to contain several thousand gallons of perchloroethylene.

The Islip dump contains roughly one half the amount of solid waste found in the Babylon landfill. Combustible materials have been incinerated at the site since it began operation. Between 1970 and 1972, an average of 151 tons of refuse was incinerated per day. Scavenger wastes were also disposed of at this site, but this practice was discontinued. A total assessment of the amount and kinds of wastes buried in this landfill has not been made.

The leachate plume extending from this dump is smaller and not as uniformly shaped as the Babylon landfill's plume. It is approximately 5,000 feet long. At a width of 1300 feet thick it is 170 feet thick and at a width of 660 feet it is 100 feet thick. The entire plume is estimated to contain approximately 1,000,000,000 gallons of contaminated water, approximately one half the amount calculated to be in the Babylon dump's plume.

TABLE VI.—SUFFOLK COUNTY LANDFILLS AND COMPOSTING SITES

Town	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
Babylon		West Babylon, Glean St. and Hall St.—Mixed municipal	X		
	52S01	Baylon, Baylon			63
Bay Shore	52S19	Hubbard Sand and Gravel, Bay Shore			
Brentwood	52S23	Pilgrim State, Brentwood			
Brookhaven		Holtsville, Blue Point Rd			
		Brookhaven (lined with PVC), Horseblock Rd.—Mixed municipal		X	75
		Center Moriches	X		200
		Manorville			
		Pine Rd., Pine Rd	X	Compost	
	52S20	Brookhaven Lab			
East Hampton		Acabonack Rd., between Acabonack and Spring—Mixed municipal			
		Acabonack Rd. (new), Acabonack Rd.—Brush	X		40
		Bull Path Rd., Bull Path Rd.—Agricultural and demolition	X		18
		Hither Hills, Mountauk Route 27—Mixed municipal	X		4
Hauppauge	52S07	Blydenburgh Rd., Hauppauge	X		30
	52S25	East Hampton, East Hampton			
	52S04	Montauk, East Hampton			
	52S04	Fire Place Rd., East Hampton			
Huntington		East Northport, Town Line East—Mixed municipal			
	52S04	Huntington, Huntington	X		65
Islip		Sayville, Lincoln Ave.—Incinerator residue			
		Hauppauge, Blydenburg Rd.—Mixed municipal	X		20
		Sonia, Sonia Rd., Brentwood—Brush and leaves	X		65
		Saltair	X	Transfer station	45
		Point-o-Woods			
Riverhead		Riverhead, Youngs Ave.—Mixed municipal			
Shelter Island		Shelter Island, Bowditch and Montauk Rds.—Mixed municipal	X		100
Smithtown		Kings Park, Old Northport and Indian Head Rds.—Mixed municipal	X		20
		Middle Country Rd., Middle Country Rd. and Southern Blvd	X		90
	52S21	Smithtown, Kings Park		X	22
	52S24	Star Sand & Gravel, Kings Park			
South Hampton		North Sea, Major Paths and Great Hill Rd.—Mixed municipal			
		West Hampton Beach at Quogue, N.Y. 27 and Old Country Rd.—Mixed municipal	X		125
			X		15

TABLE VI.—SUFFOLK COUNTY LANDFILLS AND COMPOSTING SITES—Continued

Town	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
		Sag Harbor, Bridgehampton Turnpike and Laurel Lane—Brush and cardboard		Transfer station	10
		Hampton Baus, Jackson Ave. and Old Riverhead Rd.—Brush and bulky	X	Transfer station	25
		Quogue, Old Country Rd. and Riverhead Rd		X	12
		Eastport, Northway Lane and Old Country Rd	X	Transfer station	10
		East Quogue	X		
Southold		Southold, North Rd. Between Cox and Depot Lanes	X		
Fishers I		Fishers Island	X		35

Source: New York State Department of Environmental Conservation, Region I Resource Conservation Recovery Act Inventory, Nassau-Suffolk Regional Planning Board 208–K Study.

Both of these dumps are known sources of groundwater contamination. Both are also known to contain vast amounts of potentially toxic waste. Moreover, although they are already causing groundwater contamination, future pollution could increase dramatically as massive volumes of contaminated leachate continue to disperse into broad areas of the aquifer system. The data from the investigation of the dispersal of the leachate plumes suggests the amount of waste at landfill sites is more closely related to the length and volume of the plume than the age of the dump. As larger amounts of waste are landfilled, the potential for pollution increases commensurately. Thus, there is clear scientific evidence that pollution releases to Long Island's sensitive groundwater system will increase dramatically in the future.

CONCLUSION

The landfills outlined in Tables I and VI are potential sources of toxic groundwater contamination to the Long Island aquifer system. Even dumps that are generally believed to contain only non-hazardous refuse discharge some toxic chemicals and there is also good reason to presume that most, if not all, landfills on Long Island also hold extremely toxic industrial and hazardous wastes.

Hundreds of industries on Long Island generate highly toxic wastes. The New York State Department of Environmental Conservation conducted a statewide survey in 1979 that ranked Suffolk and Nassau Counties eleventh and fourteenth, respectively, among the state's leading hazardous waste generating counties. A total of 155 waste streams in Suffolk County were shown to generate 22,575 tons of hazardous waste; 5,388,472 gallons of liquid waste; and 132 tons of solid waste. A total of 123 waste streams in Nassau County were shown to generate 18,264 tons of hazardous waste; 3,206,870 gallons of liquid waste; and 4,932 tons of solid waste during the same period. The individual breakdown of the wastes of 160 industries is presented in Table VII.

TABLE VII.—HAZARDOUS WASTE GENERATION BY COUNTY BY TYPE

Type	Description	Quantity	
		Gallons	Tons
Nassau:			
101	Acid solutions—Heavy metals	112,000	0
103	Acid solutions—Other metals	122,320	0
105	Other acid solutions	191,370	0
106	Spent etchant	14,400	0
112	Alkali solution—Heavy metals	0	25
117	Spent etchant	268,220	0
121	Nonsolvent inorganic liquid	400	0
301	Halogen solvent—Heavy metals	2,160	0
303	Other halogenated solvents	5,100	0
304	Nonhalogenated solvents	59,000	0
310	Mixture of solvents	83,635	0
314	Other organic liquids	16,000	0
504	Drag-out sludge	11,800	0
506	Filter press sludge or solid	0	95
508	Heavy metal sludge	335,530	1,312
509	Ink solids and sludges	8,580	0
511	Metal finishing sludge	1,200	1
513	Paint solids and sludges	4,875	0
522	Wastewater treatment sludge	409,450	0
602	Dust collector waste	0	53
609	Contaminated containers	0	1,300
612	Nonemulsified waste oil	23,980	0
613	Emulsified oil	1,835	0
615	Epoxy waste	60	0
619	Halogenated still bottoms	13,200	0
620	Halogenated tank residue	700	0
628	Lab chemicals	1,530	0
630	Nonhalogenated tank residue	208,500	0
633	Off-spec pharmaceuticals	0	5
636	Photographic chemical waste	99,040	420

TABLE VII.—HAZARDOUS WASTE GENERATION BY COUNTY BY TYPE—Continued

Type	Description	Quantity	
		Gallons	Tons
650	Rinse water and wastewaters	1,105,000	0
651	Mixed oils	36,200	0
653	Other mixed waste	70,385	960
655	Lab animals and human blood	0	4
657	Obsolete or rejected goods	0	609
661	Aluminum or tin dross	0	150
	Total county	3,206,870	4,933
Suffolk:			
101	Acid solutions—Heavy metals	71,600	0
103	Acid solutions—other metals	743	0
105	Other acid solutions	13,797	0
106	Spent etchant	4,800	0
112	Alkali solution—Heavy metals	28,400	0
114	Alkali solution—Other metals	9,600	0
116	Other alkaline solutions	24,575	0
117	Spent etchant	20,480	0
121	Nonsolvent inorganic liquid	220	0
122	Inorganic liquid—Heavy metal	2,600	0
302	Halogen solvent—Other metals	2,000	0
303	Other halogenated solvents	5,069	0
304	Nonhalogenated solvents	15,790	0
310	Mixture of solvents	104,530	0
314	Other organic liquids	660	0
317	Halogenated organic solids	65	0
502	Degreasing sludge	8,500	0
508	Heavy metal sludge	235,136	0
509	Ink solids and sludges	12,000	0
513	Paint solids and sludges	750	0
522	Wastewater treatment sludge	635	0
602	Dust collector waste	0	12
612	Nonemulsified waste oil	45,900	0
613	Emulsified oil	139,500	0
617	Fly ash	0	2
619	Halogenated still bottoms	65	0
628	Lab chemicals	660	0
630	Nonhalogenated tank residue	28,000	0
633	Off-spec pharmaceuticals	0	1
635	Mineral oil	660	0
636	Photographic waste	4,875	90
636	Scrap batteries	0	27
641	Solder flux or wave oil	110	0
650	Rinse water and wastewaters	4,522,310	0
653	Other mixed waste	61,812	0
657	Obsolete or rejected goods	22,640	0
	Total county	5,388,472	132

Source: New York State Department of Environmental Conservation (1979). "An Inventory of Industrial Hazadous Waste Generation in New York State."

Moreover, there is a great deal more evidence indicating manufacturers on Long Island use and generate toxic chemicals. The industrial chemical survey discussed previously in this report shows that vast amounts of toxic raw materials are used annually. The Standard Industrial Classification codes of many Long Island industries also prove that a wide range of industrial processes are in operation that are certain to generate hazardous wastes. Therefore, the only critical unanswered question is where all the toxic chemical wastes generated over the years on Long Island have gone.

One fact is certain. There are no secure hazardous waste landfills anywhere on Long Island. Consequently, it is known that industries in Nassau and Suffolk Counties did not dump their manufacturing wastes into a single site. Some wastes were buried at sea, but hazardous residues landfilled over the course of decades probably lie buried at locations scattered all over both Nassau and Suffolk Counties and are leaching into groundwater. This is known to be the case to Old Bethpage and Syosset landfills where industrial discharge data has documented dumping. Little information exists regarding dumping at other sites, but there is no evidence indicating that they are not similarly contaminated.

It is a possibility that without a rigorous hazardous waste control program in effect, industries may have dumped indiscriminantly into many of Long Island's landfills. For example, a dumpsite investigation team from the Environmental Protection Agency interviewed the Superintendent of Environmental Control for the Town of Oystey Bay during a study of the Syosset municipal dump. According to the EPA's report, the superintendent stated that "he knew nothing about alleged dumping of their (Hooker Chemical Company) wastes at the Syosset site." He was also reported to say "that landfill personnel did not question the source of incoming waste . . ." Later, it was learned that Hooker Chemical Company dumped its Wastes at the site for 22 years. Their rate of dumping ultimately reached an estimated total of 362.9 metric tons/year. In the past, many of Long Island's dumps have been loosely run, in a similar haphazard fashion.

Landfills on Long Island probably contain hazardous industrial waste, but they are also known to hold other kinds of toxic wastes. For example, over 20 million gallons of septic tank sludges are incinerated or landfilled annually in Nassau and Suffolk Counties. Those sludges are typically contaminated with a host of chemical residues. Perhaps the most toxic are the chemicals found in cesspool cleaning products. These solutions are known to contain high concentrations of benzene, methylene chloride, and other chemicals of toxic concern. Their application to septic systems results in widespread groundwater pollution and eventual contamination of septic tank sludges. Hundreds of thousands of gallons of these products are estimated to be used annually on Long Island. Landfilled in dumps, these chemicals could be a major cause of groundwater pollution.

In short, toxic solid wastes have not been managed well on Long Island. Large areas of land have been turned into dumps. Piles of waste, hundreds of feet tall, are located in the island's most environmentally sensitive areas. None of them are constructed to contain toxic wastes securely over the long run, despite the necessity of total security. Already dump problems exist. Some sites have been identified as sources of toxic chemical groundwater contamination. Other dumps are potential Love Canals; several sites containing thousands of tons of toxic and hazardous waste are situated in the vicinity of homes. An overall study of the island-wide solid waste disposal problem desperately needs to be made, for without such a study sound groundwater quality management will be difficult or impossible to accomplish.

There is no doubt that groundwater quality in areas of Nassau and Suffolk counties is jeopardized by intense contamination emanating from numerous landfills. For decades, domestic, industrial and hazardous wastes have been disposed of indiscriminately, without adequate concern for strict environmental safeguards. These wastes contain some of the deadliest toxic compounds known to exist. Nearly all of the landfills are incapable of holding these wastes securely in the short run, much less for the centuries ahead. Consequently, water quality deterioration is guaranteed to increase. Extremely toxic and persistent chemicals are already known to be flowing through sandy soils that optimize groundwater disperal. That problem will only be worse in the future. Theoretical estimates predict that a typical 100-acre landfill located in characteristic Long Island soil conditions could generate 40 million gallons of contaminated leachate per year. In all, there are hundreds of acres of landfills on Long Island.

At present, environmental institutions are wholly incapable of adequately managing the landfill problems of Long Island. A comprehensive study of the threats these dumps pose to public health and the environment has never been made. Until such a study is completed, it will be virtually impossible to protect drinking water supplies and public health properly. Meanwhile, the deterioration of Long Island's sole source of drinking water will continue.

Mr. CONABLE. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. Martin).

Mr. MARTIN. Mr. Chairman, I thank the gentleman for yielding.

There are, of course, many chemical substances and processes which are known from scientific evidence to present a toxic hazard to humans exposed to them. For some, the actual hazard is very low because the potency and the exposure is very low and controlled.

With carcinogens, those substances the exposure to which might increase the risk of cancer, there is a greater concern because in some instances a small exposure may be harmful.

The International Agency for Research on Cancer has published a number of monographs evaluating the evidence of carcinogenicity. Because during the debate today there have been several references to compounds about which there is some question that they may or may not be carcinogenic, I thought it would be helpful to submit for the Record, as I will do when we return to the full House of Representatives the latest evaluation of this question. I will report on the September 1979 monograph on the evaluation of the carcinogenic risks of chemicals to humans prepared by the International Agency for Research on Cancer.

Mr. Chairman in the excerpts which I will submit for the Record there will be a summary of the method that they use for evaluation of the various papers which have been published in the scientific literature and which have been subjected to peer review and for which there is general agreement on the validity of those studies; and a table and a summary of their findings with regard to a list of substances, some of which they show have only evidence which is based on animal testing, others which they will show there is evidence based on both animal testing and on human epidemiology and others for which they find no substantive evidence of carcinogenicity.

I thought it would be helpful to members of the committee and the House to have that summary at their disposal.

I yield back my time.

Mr. **Rostenkowski**. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. **Conable**. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Illinois (Mr. Findley).

(Mr Findley asked and was given permission to revise and extend his remarks.)

Mr. **Findley**. Mr. Chairman, I rise in support and urge passage of H.R. 7020, the Hazardous Waste Containment Act of 1980.

After having listened to accounts of the tragic and senseless disposal of hundreds of thousands of pounds of hazardous chemical wastes in poorly designed and ill-conceived waste dumps, it is now time for Congress to act with decisiveness to deal with this problem.

Through technology and man's ingenuity, we create over 1,000 new chemical compounds a year. At last count, 50,000 different chemical compounds were on the market to be used for producing everything from fertilizer to makeup. Yet the U.S. Environmental Protection Agency has classified almost 35,000 of these chemicals as being either definitely or potentially hazardous to human health. Although cause-and-effect relationships are difficult to prove, evidence is beginning to mount that some of these chemicals may cause cancer. What is truly alarming is that these wastes have been disposed of in giant landfill dumps with little thought given to long-term health effects and the potentially disastrous impact these chemical wastes might have on our Nation's underground drinking water supply.

Over half of the people in this country depend on wells for their drinking supply. Water that may have fallen to Earth as long as a century ago has percolated slowly down through soil and porous rock to collect in vast underground aquifers that were virtually void of chemical impurities. Now substances, mostly petrochemicals thought to have been harmlessly disposed of years ago, are beginning to show up even in the deeper U.S. wells. This contamination will grow as those forgotten chemicals of the past steadily reach more of the underground reservoirs from which Americans will drink in the future.

The residents of Wilsonville, Ill., a small community of 800 in my district, are acutely aware of the threat of contamination of their water supply by buried chemicals and their water supply.

In 1977, a hazardous waste disposal dump was constructed within the city limits of Wilsonville. When the residents discovered that the company, Earthline, Inc., was burying large amounts of PCB's, dirt contaminated with mercury, cyanides, mercuric sulfide, dioxin, and other highly lethal chemical compounds within their city limits, they chose to go to court and try to force the dump to shut down. In August of 1978 Illinois District Court Judge John Russell ordered Earthline to halt all processing, storing, burying, and disposing of hazardous waste at Wilsonville and to disassemble and remove completely their waste disposal facility located there.

Judge Russell justified his sweeping order on two important grounds. At no time did Earthline officials make known to residents of Wilsonville what was to be buried at the site prior to the granting of construction permits. The judge noted that in a letter written by Earthline officials to the village president and board of trustees:

> There is no mention or indication that hazardous toxic waste substances that are dangerous to human beings and other living things are to be buried at the site.

Second, Wilsonville depends, to a large degree, on underground water for drinking. Although Earthline proclaimed that the dump poses no harm to the water supply, the Illinois attorney general argued, and the court agreed, that it was impossible to predict that chemicals leaching from the dump would not reach this underground water and thus poison the town's water supply.

As a result of the problems encountered by Wilsonville, last year I introduced H.R. 5617, the Hazardous Waste Disposal Act. My bill was designed to—require that new chemical disposal sites be located away from populated areas—require the U.S. EPA to conduct an extensive inventory of active and abandoned waste dumps—establish a trust fund to clean up and contain spills of hazardous waste from abandoned sites and to provide compensation to victims who are exposed to these wastes—and require that public hearings be held prior to the granting of permits and that full disclosure be made of all hazardous wastes to be buried there. Only then could a permit be issued. If this provision had been law, Earthline would have been required to tell the residents of Wilsonville precisely what dangerous chemicals would be stored in their community.

I am very pleased that H.R. 7020 contains many of the provisions included in my bill. For example, both bills would:

First, require U.S. EPA to conduct an inventory of sites and create a list of those sites which need immediate attention **[Sec. 105(8)]**;

Second, create a "superfund" made up of Government and industry contributions to pay for cleaning up of hazardous wastes from abandoned waste sites **[Sec. 221]**; and

Third, establish strict lines of liability for those who engage in the waste disposal business **[Sec. 107]**.

EPA estimates that 57 million metric tons of hazardous waste are produced annually. Eighty to 90 percent of these wastes are disposed of in what EPA calls an environmentally unsound manner. There are more than 50,000 inactive hazardous waste disposal sites in the United States and of these, nearly 2,000 may pose an immediate threat to the environment and public health. I am convinced, as I know a number of my colleagues are, that passage of H.R. 7020 would be an important step forward in helping to prevent future catastrophies such as occurred at Love Canal, the Valley of the Drums, and Wilsonville.

● Mr. RODINO. Mr. Chairman, I strongly support H.R. 7020, the Hazardous Waste Containment Act, with the Ways and Means Committee's amendment to authorize increased funding and a change in formula for financing the hazardous waste response trust fund.

Americans throughout the country are becoming increasingly concerned and alarmed by the pervasiveness of chemicals and other toxic substances in our environment. Despite considerable improvements and benefits from such strong environmental protection legislation as the Clean Air Act, the Water Pollution Control Act, and the Resource Conservation and Recovery Act enacted in 1976, we have come to recognize the urgent need for further action to meet the emerging problem of hazardous wastes.

In 1979 the Environmental Protection Agency estimated that there are between 30,000 and 50,000 inactive and uncontrolled hazardous waste sites in the United States, of which between 1,200 and 2,000 are considered as serious risks to public health. The horrors of Love Canal and the more recent incident at Chemical Control in Elizabeth N.J., have demonstrated the need for passage of H.R. 7020.

The Resource Conservation and Recovery Act is highly inadequate, for it does not authorize action if a financially responsible owner of a hazardous dump site cannot be identified; nor does it authorize the Federal Government to subpoena documents or persons in investigating hazardous waste disposal; nor does it require companies to reveal the existence of chemical dumps and to monitor inactive dumps for possible pollution; nor does it provide sufficient funds for State hazardous waste control.

I believe our experience in New Jersey clearly shows the desperate need for enactment of H.R. 7020.

Because our State has many industries and businesses using and manufacturing chemicals and toxic substances, the New Jersey Department of Environmental Protection has moved with energy and effectiveness to deal with the hazardous waste problem.

The State is currently submitting proposed rules and standards for assuming management of the hazardous waste disposal program from the Environmental Protection Agency. In addition, New Jersey has moved ahead to establish a strong State management program which serves as a national model. It includes a spill compensation and cleanup fund financed by a tax or fee on petroleum substances and other hazardous materials which has been in effect since April of 1977. It has also established a criminal strike force to apprehend and prosecute illegal dumpers, a manifest system to track the movement of hazardous wastes and a program to site, license, and operate new environmentally sound disposal facilities.

However, the scope of the problem is beyond any individual State's capabilities to resolve alone. New Jersey has identified over 200 sites which are now targeted for priority cleanup at a cost which is estimated now at over $45 million. Department of Environmental Protection recovery teams have cleaned up 18 sites throughout the State, removing between 3 and 4 million gallons of liquid chemicals and 43 pounds of hazardous solids. Based on this work, the Department estimates that hazardous dump sites will cost between $5 and $10 million to clean up. Yet the Chemical Control site at Elizabeth alone has already cost over $11 million for cleanup. The $3 million per year authorized by the legislature from the spill compensation and cleanup fund for remedial work or cleanup of abandoned hazardous waste disposal sites has already been committed for fiscal year 1982.

Mr. Chairman, I urge approval of H.R. 7020 to deal with this urgent national problem.●

● Mr. MURPHY of New York. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. As a member of the Interstate and Foreign Commerce Committee, I am pleased that this proposed legislation has made such significant progress in this session of the Congress.

The need for legislation to clean up hazardous waste sites is clear and compelling. The combination of this bill and the oil pollution liability measure (H.R. 85), provides a direct and definitive congressional response to the problems of oil and chemical spills and the cleanup of hazardous waste sites. Together these pieces of legislation constitute a most impressive "superfund" proposal to deal with the growing problem of the impact of hazardous substances on public health and the environment.

From the *Amoco Cadiz* to Love Canal to the PCB contamination of the Hudson River, our modern age has shown that, with technological and scientific advances, also come substantial risks. These bills, which we are considering today and with which I have had a long involvement, will provide the necessary controls and money for addressing a wide range of human health and marine ecosystem problems coming from hazardous substances.

The funding established in this legislation is essential for Government at all levels to address the serious problems of the release of toxic substances into the environment from abandoned chemical dump sites. In my State of New York we have serious problems in this regard. Industry in the State generates approximately 1.36 million tons of hazardous waste each year. These generators are concentrated in southeastern New York, Niagara and Erie counties, the Syracuse area, and the capitol district.

Although New York's hazardous waste problem is most graphically demonstrated in the Love Canal case, the State's dumpsite impacts go far beyond that area at Niagara Falls. For example, at the Chelsea Positive Chemical Corp. site on Staten Island and at College Point in Queens County, serious chemical problems have been discovered and immediate cleanup is necessary. Also, ground water contamination on Long Island is presently being monitored at a price tag of over a half million dollars.

Clearly, remedial action is necessary not only to establish clear governmental response mechanisms but also a fund to finance such cleanup so that the limited resources of State and local governments will not be drained.

In 1979, the New York State Department of Environmental Conservation inventoried 520 abandoned hazardous waste sites. More recent research indicates that the number of sites may range from 800 to 1,000 within the State. Clearly, the need for this legislation was never more evident. We must vigorously address the environmental emergencies that form almost daily headlines in our newspapers.

The bill before us today, in addition to providing the necessary financial resources for the Federal and State governments, also requires a nationwide inventory and prioritization of hazardous waste sites to give the Government more solid information on the existence and the extent of the problem. The sites will be given priority according to the relative danger they present to the public health and environment. This will permit a more systematic approach to cleanup and containment.

H.R. 7020 authorizes the Government to respond to releases of hazardous waste sites. In those States capable of carrying out responsive actions, the Environmental Protection Agency can enter into cooperative agreements with States in order to allow them to take action with financial assistance from the fund [Sec. 104].

There are some major differences between the House version of superfund—composed of H.R. 85 and H.R. 7020—and the legislation being considered by the Senate. Given the short time we have left before our recess, it is imperative that the House move expeditiously on this bill so that a conference committee can be called quickly and a suitable response to the problem of oil pollution and hazardous substance cleanup can be enhanced.●

● Mr. Brown of California. Mr. Chairman, the ability to respond to emergencies such as the much publicized Love Canal incident, and to prevent such occurrences from being repeated in the future is provided for in the "superfund" legislation (H.R. 7020) which we are considering today. As one who has a major abandoned hazardous waste dump in my district, I have closely followed this legislation. I am pleased that both the leadership in the House as well as the leadership in the Senate have made it clear that we need to act on this legislation in this Congress. I hope that the other body will move forward on their bill in time to pass legislation this year.

As a member of the Science and Technology Committee and the Technology Assessment Board, I have long been involved with the interface of science, technology, and society. It is clear that we have neglected, in our scientific and technological approaches to many industrial processes, the deleterious effects of products and by-products of industry. The impacts have been widespread, and while sometimes discovered late, nevertheless these problems are critically in need of attention. This legislation fills a gap in existing law to allow for cleanup of identified sites. I will be supporting the most comprehensive bill possible, and urge my colleagues in the House to do the same.

Mr. Chairman, in all candor, I should note that I have other reasons for supporting this legislation beyond those of the general welfare and the national interest. One of those reasons is somewhat embarrassing; I was closely involved with the 1976 amendments to the Resource Conservation and Recovery Act (RCRA) as chairman of the Subcommittee on Environment and the Atmosphere of the Committee on Science and Technology.

While the parts of that legislation which I handled related solely to research, development, and demonstration, I believed, as did many other Members of Congress, that the 1976 amendments closed the gap in the law as it existed then. Under those amendments to RCRA, which predated the Love Canal incident, we attempted to draft legislation which would regulate the dumping of hazardous wastes. Our significant mistake in 1976 was to underestimate the national scope of this problem, and the extent of hazardous wastes already dumped throughout our land. Some of the information which has led to the legislation before us came out of the 1976 amendments, but too little has been done by industry, government at all levels, and the Congress for any of us to be proud of our record.

My second exceptional reason to support this legislation, and the strengthening amendments to it has already been mentioned; I have, within my congressional district, one of the major abandoned hazardous waste dumps in the Western United States. The now-closed Stringfellow Class I disposal site in western Riverside County, Calif., has been known to me and my staff as a serious problem since before my election from this area in 1972. Like Love Canal and other sites, the severity of the problem varies with the climatic conditions and has yet to be fully assessed. Like Love Canal, this site will take many millions of dollars to clean up. Unlike Love Canal, the harm to individuals has not yet become a serious problem, and with effective action and some luck, no health damage will develop.

As I have worked with local citizens, State and local government, the regional office of the Environmental Protection Agency and other interested parties, I have come to truly appreciate the complexity of the issue of old chemical dumps and all of the ramifications of programs aimed to cleaning them up. The legislation before us is a constructive step, and together with several strengthening amendments, I believe H.R. 7020 will truly fill the gap I had hoped the Congress was filling several years ago.

The need for this comprehensive legislation is clear. A study done for the Environmental Protection Agency estimates that there are between 1,200 and 2,000 hazardous waste sites which could pose serious health risks and environmental damage. The bill fills a critical gap in current law by providing EPA with the authority and resources to clean up inactive hazardous waste sites. There is no other authority under which EPA can act at this time. Neither the Resource Conservation and Recovery Act nor the Clean Water Act provide adequate authority; and H.R. 85 only covers chemical and oil spills in navigable waterways. EPA has a major inventory program underway of the hazardous waste sites in the country. Funding is crucial at this time if work is to begin on the already identified sites.

Mr. Chairman, I understand that the chemical industry has reluctantly agreed to the $1.2 billion fund called for in the Ways and Means version of the bill [Sec. 221]. This would allow for the cleanup of approximately 250 sites. This by no means would cover nearly the number of sites that need work, but would allow work to begin on the most urgent cases. EPA's task, far from one of coming up with a list of sites in need of attention, is one of prioritizing them [Sec. 105(8)].

The chemical industry understandably has placed great pressure on the Members of Congress to keep the size of the fund as well as the industry contribution to a minimum. But the truth is, there is no equitable reason why the cost of the cleanup of hazardous waste sites should be the burden of the taxpayers. Industry points out correctly that the cost will be passed on to the consumer; this simply means that the true cost of a product in its broad sense will include the hidden costs which were previously omitted. This seems to me to be the only reasonable solution to a problem brought on by past improper waste disposal practices. I support, as a minimum a 75-percent industry contribution and urge my colleagues to do the same [Sec. 211].

It is critical that the liability provisions of the bill be amended to conform with prevailing State common law and the purposes of this act. This is why I urge my colleagues to support Mr. GORE's amendments. State common law generally holds that abnormally hazardous activity justifies the imposition of strict liability. In my own State of California, strict liability is already imposed in cases involving spills of hazardous substances involving surface waters. A bill just passed this year implements strict liability now for spills involving possible contamination of ground water as well. This means that a defendant is held liable even if he or she demonstrates due care in the prevention of harm. H.R. 7020 specifically counters strict liability provisions by relieving the defendant of liability if the defendant can show that the injury involved "an act or omission of a third party." This is inconsistent with strict liability as it is understood and practiced in my State and I believe in many other States [Sec. 107].

In California, a defendant must prove nonnegligence—the burden of proof is on the defendant—and third party defenses are only acceptable if the defendant can prove that the act of the third party causing the harm was intentional and could not have been prevented by due care or foresight. Mr. GORE's amendment, which would limit third party defense to instances which the defendant did not have a contractual relationship with the third party, is an acceptable compromise. The amendment should clarify defense by a third party as defined in the bill.

A second matter of concern regarding liability provisions of H.R. 7020 involves the joint and several liability question. The bill as it is now drafted would require a court to apportion liability among defendants if they cannot demonstrate what their percentages of the damages should be. Mr. Gore's second amendment would simply allow the court the option of apportioning liability and not require the court to do so as the bill now provides. In California, a party that is held jointly liable is generally also held fully liable and there is no mandatory apportionment. Mandatory apportionment undermines the concept of joint and several liability to definition.

Finally, in light of the often controversial and not thoroughly understood correlation between exposure to hazardous material and specific health effects, I urge your support of Mr. Eckhardt's amendment that would set aside $10 million of the fund to finance a major health effects research effort. Adequately funded studies would alleviate anxiety resulting from poorly conducted and inconclusive studies as well as providing valuable information regarding the targeting of funds for specific sites and adding to the pool of much needed information on the effect of chemicals on health [Sec. 104(i)(5)].

Labor, industry, and Government leaders all agree that this legislation is needed. I trust that we will see the benefit of a strong and comprehensive bill.●

● Mr. RAILSBACK. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. I feel the potential danger faced by people living near inactive, hazardous waste sites is too great to allow these sites to remain unmonitored and in many cases, unknown.

No comprehensive list of inactive, hazardous waste sites exists. Last October, the Interstate and Foreign Commerce Subcommittee on Oversight and Investigations published a survey of sites used by the 53 largest domestic chemical companies which, according to the subcommittee report, represents about 14 percent of operating chemicals facilities in the country. The percentage is not large and does not include sites used by small industries whose disposal practices may not be as modern.

So, legislation requiring an inventory of inactive, hazardous waste sites; the development of a national hazardous waste response plan [Sec. 105]; and monitoring of sites by owners as well as setting up a fund for cleanup of especially dangerous sites is absolutely necessary [Sec. 221]. I would like to add that I feel industries which contributed to the problem should bear most of the responsibility for cleanup costs. The Ways and Means Committee amendment to increase industry's share of the fund to 75 percent and to provide a $1.2 billion fund. I do not feel taxpayers should bear an equal share of cleanup cost, especially since the industry's fee is tax deductible from income taxes.

The fund, itself, must be large due to the magnitude of the problem. The Environmental Protection Agency (EPA) estimates that $44 billion is needed to clean up hazardous waste sites. I understand that the contractor conducting the study for EPA has been critized, since it estimated that 32,254 to 50,664 abandoned hazardous waste sites exist while the Subcommittee on Oversight and Investigations estimates that only 891 sites must be cleaned up. However, even 891 sites will be expensive, and the $1.2 billion authorized by the Ways and Means Committee's amendment does not seem unreasonable.

I am personally concerned because the subcommittee's waste disposal site survey indicated that Illinois has 50 closed disposal sites and an additional 20 are possibly closed. Only six other States have more inactive sites than Illinois. My concern also stems from the fact that I feel responsible disposal practices must be encouraged now. The chemical and nuclear waste facilities located near Sheffield border on Illinois' 19th Congressional District, which I represent. People in the area are constantly indicating to me that they are worried about how the waste will affect them, their children, their livestock, and their land. I think a bill such as the Hazardous Waste Disposal Act will force chemical companies to look closely at the effects of poor disposal methods and help encourage better practices in the future. Therefore, because Illinois has so many inactive, waste disposal sites—reported by only the 53 largest chemical companies—and because many of my constituents live near a hazardous waste site, I support the legislation with the Ways and Means amendment to increase private industry's share of the hazardous waste reponse trust fund.●

● Mr. DANNEMEYER. Mr. Chairman, the key question in the debate over H.R. 7020 is not whether abandoned waste sites should be cleaned up but who can do the job best, and quickest. I think most Members would agree, and certainly this one does, that if a site has been abandoned, or if the current owner cannot afford the cleanup, and the site is dangerous, then Government has an obligation to step in. But what level of Government? A little Government can go a long way; too much Government and bureaucratic inertia sets in, slowing things down rather than speeding them up as the people close to these sites understandably want.

As for the money, whether it is $600 million or $1.2 billion, I think most Members would agree, and this one does, that it should be spent wisely, not just thrown at the problem willy-nilly so we can claim we have done something about it. But this bill would have us spend all that money, whichever the amount is, before we have found out how many of these sites there are, what the best means are of disposing of them, how much money is really needed, and what procedure should be followed in case of a hazardous waste emergency. Somewhat ironically, and unfortunately, the bill provides for studies to obtain this information, but does not wait for the results before giving the EPA administrator both the money and authority to act [Sec. 301].

Understandably, there are those who say we cannot wait for studies; that we study things to death, that what is needed is action now—and I agree with much of what they say. Sure, problems can and have been studied to death; that is one reason I am reluctant to see EPA play a lead role in the cleanup. And yes, 24 months is too long for proper studies to take; they can and should be done in 18, as will be provided for in the amendment I will be offering. But, there is a distinction that has to be made between obtaining necessary information and studying just for the sake of studying. In this case, one thing that surely needs to be looked into, and the studies called for in the Commerce Committee's version of the bill will look into it, is the extent to which private enterprise might be willing to undertake hazardous waste cleanup on a "no-cost, or low-cost, to the taxpayer" basis. Farfetched, you say. Well, down in Texas—Harris County, Tex.—they do not think so. Just last spring the Gulf Coast Waste Disposal Authority in Harris County requested bids on the construction of a comprehensive waste disposal facility featuring three high-temperature incinerators. Would you believe that 22 of the 28 firms contacted actually submitted bids, 11 of the bids met all the criteria and now 2 firms have been selected to build and operate the facility without any subsidy from the Harris County taxpayers. In exchange for the use of a site, those firms will finance the building of the facility and will pay a "percentage of revenue" fee to the Gulf Coast Authority.

How could that solve the problem of inactive sites you ask? Well, if private enterprise is as eager to get into hazardous waste cleanup on a profitmaking basis as the Texas example would indicate, what is to prevent other units of government which might choose to go this route, from specifying in their criteria and in the final contract, that the successful bidder will be required to clean up inactive sites—either in exchange for a particular site or a reduction of the fees the firm will pay, or whatever. Not only would such an approach be cheaper but, given the track record of EPA, it is likely to be quicker and more respective of the wants and needs of the people in the areas affected. And if anyone has any doubts about how slow EPA can be in the area of hazardous waste, check how long it has taken them to get RCRA regulations in place.

Granted, the aforementioned approach may seem novel to some, but it is technologically feasible and it has the advantage of getting rid of the wastes once and for all instead of moving them to another landfill. Just because it is new, is there any reason that it should not be explored before we leave ourselves, and all the people who have a personal interest in cleanup, to the tender mercies of EPA. After all, it may just turn out that private enterprise can solve the problem more quickly and cheaply than EPA, and that superfund and superbureaucracy is not really all that necessary. Certainly we ought to find out; for even if it turns out EPA is the only agency that can handle the problem, the time spent in completing the studies will result in better use of the funds that will subsequently be spent. In short, either way, the American people win by checking out the alternatives and I urge this body to give consideration to that sort of an approach.●

● Mr. LENT. Mr. Chairman, there is an urgent need for this body to adopt a "superfund" measure to deal with the cleanup of abandoned and inactive hazardous waste sites. Unfortunately, because of a gap in the Resource Conservation and Recovery Act, no legal authority currently exists which can adequately cope with this growing national dilemma. Therefore, it is incumbent on us to enact legislation to fill the gap.

During the past year and a half, the Oversight and Investigations Subcommittee, of which I am ranking minority member, held over 13 days of hearings on the issue of hazardous waste disposal, including one in my district of Long Island. The results were disquieting indeed. The subcommittee found that negligent dumping practices over the years have made many disposal sites extremely hazardous and in need of immediate cleanup. Our findings were documented in two reports, one of which contained a list of the waste disposal sites used by 53 major U.S. chemical companies since 1950 and the wastes disposed of in those sites. The other report cataloged much of the current knowledge about the hazardous waste disposal situation in this country, and including numerous legislative and regulatory recommendations for helping to solve existing problems. In my opinion, these two reports standing alone provide ample documentation of the need for a superfund bill.

Mr. Chairman, I have been a staunch supporter of the superfund legislation from the start. I worked closely with the key Commerce Committee sponsors of this measure in developing a carefully honed bipartisan compromise which was reported out of committee by a 21 to 3 vote. That compromise, while unsatisfactory to some, did provide the essential first stop toward passage of this vital legislation.

However, I believe there are ways in which the Commerce Committee's bill can be improved. I think that the amendment offered by the gentleman from Texas, Mr. Eckhardt, which would earmark $10 million of the fund for health studies, is one way **[Sec. 104(i)(5)]**.

In essence, that amendment will assist in devising a better system for conducting health studies of residents living near possibly dangerous hazardous waste sites. The recent debacle involving EPA's attempts to come up with reliable health studies of Love Canal residents is ample evidence of the need for a better system.

Mr. Chairman, in closing I reiterate my support for a superfund bill. This country needs a system for coping with the dangers of abandoned and inactive hazardous waste sites. Any further delay in enacting that system will increase the risk to the lives and health of the citizens of this country. I believe it is our responsibility to minimize that risk by passing a superfund bill today.●

[Note: Mr. Rinaldo's remarks were printed in the Extensions of Remarks, Sept. 23, 1980, p. E4507.]

● Mr. **Rinaldo**. Mr. Chairman, I am pleased to rise in support of H.R. 7020.

This bill would close a gap in existing Federal environmental laws by providing Federal authority and funding for the cleanup of abandoned hazardous waste sites. The extent of the present dangers and the future hazards posed by the existence of abandoned hazardous waste sites throughout the Nation is staggering. It is a problem which originated many years ago as American industry began to use more and more chemical substances and to generate increased amounts of toxic waste. Such tragedies as Love Canal and Chemical Control Corp. are the result of improper and often negligent disposal of hazardous wastes in the past.

As a member of the Commerce Committee's Oversight and Investigations Subcommittee, I participated actively in the extensive study of hazardous waste disposal which was conducted in 1979. The subcommittee compiled an extensive record documenting the massive health and environmental problems caused by toxic waste sites throughout the Nation. Many of the subcommittee's recommendations are contained in the bill before us today.

I am personally well acquainted with the monumental problems which can arise from the presence of abandoned hazardous waste sites in our communities. Last April, a very serious accident involving extremely toxic chemicals occurred in Elizabeth, N.J., in my congressional district. The Chemical Control Corp., the site of thousands of drums of chemical waste which had been accumulated and stored there illegally, caught fire. Thousands of drums of chemicals, many of the contents of which were unknown, exploded and burned at very high temperatures.

The potential damage was great—the fire could have sent clouds of extremely toxic fumes over my entire congressional district, Staten Island, and lower Manhattan. Fortunately, because of favorable weather conditions, the cloud of smoke did not linger over residential areas.

Less than 3 months later, a major fire occurred in the chemical waste storage area of a paint manufacturing company and spread toxic fumes over the city of Carlstadt, N.J. And within a few days of this incident, storage drums at a chemical disposal plant in Perth Amboy, N.J., exploded and caught fire, causing the complete destruction of 7 buildings and 16 businesses in an industrial park, and forcing evacuation of nearby residences.

But New Jersey is certainly not the only State which is plagued by the dangers of hazardous waste sites. The contamination of drinking water supplies on Long Island, the Valley of the Drums in Kentucky, and the ground and water contamination by toxic chemicals in Montague, Mich., indicate that this problem is indeed nationwide. The cover story in Time magazine last week on "The Poisoning of America" presents a compelling picture of the situation our country is facing in dealing with toxic waste dump sites, and I commend it as very educational reading for all Members of this House.

This bill provides much-needed Federal authority for the Environmental Protection Agency to take charge of abandoned hazardous waste sites which pose dangers to public health and the environment **[Sec. 104]**. It also establishes a Government-operated fund which is financed by an excise tax on oil, petrochemical feedstocks, and inorganic materials, and by Federal appropriations **[Sec. 211 and 221]**.

An important feature of this bill is the inventory of inactive hazardous waste sites which would be compiled by the States. States would also be required to compile priority lists of inactive sites, from which EPA would compile a national priority list based on the threat to public health and the environment **[Sec. 105]**. I feel it is most important, faced with the gigantic task of cleaning up thousands of waste sites, to establish priorities so the most dangerous sites can receive attention first.

As I have indicated, I know from personal experience the very great dangers posed by the existence of abandoned hazardous waste sites. I urge the passage of this legislation so that we can begin the long process of cleaning up these blights on the American landscape.●

Mr. CONABLE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker pro tempore (Mr. Brademas) having assumed the chair, Mr. Natcher, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 7020), to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, had come to no resolution thereon.

[From the Congressional Record, Sept. 23, 1980, pp. H9436–H9479]

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7020), to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. Florio).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7020, with Mr. Natcher in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole arose on Friday, September 19, 1980, all time for general debate had expired.

Pursuant to the rule, the substitute committee amendment recommended by the Committee on Interstate and Foreign Commerce now printed in the reported bill shall be considered as an original bill for the purpose of amendment and each section shall be considered as having been read. No amendments to the amendment recommended by the Committee on Ways and Means printed in the bill shall be in order except pro forma amendments for the purpose of debate and following amendments which shall not be amendable except by pro forma amendments: First, the amendments recommended by the Committee on Ways and Means; second, the amendment printed on page H7926 in the Congressional Record of August

25, 1980, by Representative Ullman of Oregon; and third, the amendment to be printed in the Congressional Record of September 5, 1980, by and if offered by, Representative Florio of New Jersey. Upon the adoption of the amendment recommended by the Committee on Ways and Means to the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce, and no further amendment to the bill shall be in order.

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Are there any amendments to section 1?

PARLIAMENTARY INQUIRY

Mr. STOCKMAN. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. STOCKMAN. Mr. Chairman, under the terms of the rule, would a substitute amendment to the entire bill, H.R. 7020, be in order only now, at this point for this bill?

The CHAIRMAN. The Chair would like to advise the gentleman that the gentleman's statement is correct, assuming adoption of the Ways and Means Committee amendment at the conclusion of the reading of the bill for amendment. Under the rule, no further amendments would then be in order.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STOCKMAN

Mr. STOCKMAN. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Stockman: Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980."

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective cleanup of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—Standards and Permits for Hazardous Waste Management"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of effective State programs to assure the cleanup and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing cleanup priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

"(b) RECOVERY OF CLEANUP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State cleanup and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 3005 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 180 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazardous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing cleanup and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, State, and local governments and for interstate and nongovernmental entities, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the cleanup and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of cleanup and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based upon population and industrial production. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous wastes sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024), the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrator's determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training, and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

ASSISTANCE TO STATES ATTORNEYS GENERAL

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025;

"(1) $75,000,000 for the fiscal year 1981;
"(2) $150,000,000 for the fiscal year 1982;
"(3) $150,000,000 for the fiscal year 1983;
"(4) $75,000,000 for the fiscal year 1984; and
"(5) $50,000,000 for the fiscal year 1985.

Not less than 80 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $15,000,000 for the fiscal year 1982;
"(3) $15,000,000 for the fiscal year 1983;
"(4) $5,000,000 for the fiscal year 1984; and
"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $10,000,000 for the fiscal year 1982;
"(3) $10,000,000 for the fiscal year 1983;
"(4) $10,000,000 for the fiscal year 1984; and
"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

Mr. STOCKMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. Mr. Chairman, I offer this comprehensive substitute to H.R. 7020, not because I am under any illusions that there is going to be a ground swell of support for this alternative in the House, but nevertheless I would act to impose on the time of the House just for a few minutes today to offer this substitute because I do not want to see this body stampeded into enactment of a major piece of regulatory legislation under some substantial illusions of its own. Now, as I have followed this debate, as I have read the dear colleagues, as I have watched the newspaper coverage, one would get the impression that we have before us a well-crafted bill that is targeted at and focused on a well-defined problem, and that it has been very carefully thought through and that we have an overwhelming consensus—and even industry—behind it; so why take time to debate? Why take time to examine what we are doing? Let us just move it through and enact it into law.

I would suggest to the House today that if any of my colleagues have that view of what we are doing in this major piece of legislation, I would respectfully submit that they are sadly mistaken, because we do not even have a solid policy-based statute before us at all with clear definitions as to what will be regulated; what the cost of the EPA activities will be; containing cost-benefit standards which will guide the Agency in the thousands of choices that it will have to make regarding sites that it orders to be inventoried; regarding sites it orders to be monitored; regarding sites it orders to be cleaned up at a cost of millions of dollars.

Nowhere in this bill of 74 pages will you find any specific criteria whatsoever to determine what are hazardous threats posed by inactive or abandoned sites, and what would be the defined and limited scope of EPA activities **[Sec. 101]**.

Instead of that, you have the same approach that we tried time and time again this past decade, which is to respond to a serious problem that has built up in the newspapers and with sensationalist publicity—not by enacting a carefully crafted statute, but by simply legislating an enabling act that delegates openended, unlimited, undefined powers to the administrative agency in the hopes that they can figure out the problem and that they will exercise their power prudently, given the other goals that we have as a society.

Well, I do not think that has been a very successful approach. We spent the first half of the 1970's passing these broad, sweeping enabling acts—the Clean Air Act, the Clean Water Act, the Toxic Substances Act, and so forth. Then, we spent the second half of the 1970's decrying and complaining about regulatory overkill and about the enormous power and lack of discrimination and the excess costs that were being imposed on the economy, and the lack of jobs, and the firms, and the ability of our economy to grow. But, I would suggest that the problem was not bureaucrats; the problem was not the EPA. The problem was right here in this House, because we were unwilling to write carefully crafted, carefully defined legislation in which we make the policy changes here rather than delegate them. That is what we have before us today, another trip down the same route.

We have an open-ended enabling statute that makes EPA the czar, and I say this without exaggeration, without hyperbole—makes EPA literally the czar over every hazardous waste site in the entire country, and that includes every landfill, every waste site, every junk yard, every leaching pit, every industrial lagoon on the back of an industrial property, every municipal dump, even every back yard rubbish pile that has been accumulated anywhere in the country. It empowers EPA, in the case of any of those instances that I have cited—and there are literally hundreds of thousands of sites that would qualify for one of those categories, to order the owner to undertake an inventory at a cost of $100,000 or more; in some cases, to order the owner to monitor the site periodically with very expensive procedures, hiring a contractor, and so forth, at the cost of many hundreds of thousands of dollars more; and to arbitrarily, without meeting any threshold of proof, any demonstration that hazards are present, to order the cleanup of any one of these hundreds of thousands of sites at a cost ranging anywhere from $10,000 to $10 million, depending on the nature of the site.

The point is, there are no standards at all, and the coverage, the scope of this bill, is plenary. It covers every waste site, every junk yard, every municipal dump in the country, including those on private property.

Now, why do I make that charge? The reason I make the charge is, if you read the bill and try to find out what is an inactive hazardous waste site, the whole scope, the whole focus of this bill, you will find it is defined: "An inactive hazardous waste site is a site that contains hazardous material."

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. Stockman was allowed to proceed for 5 additional minutes.)

Mr. STOCKMAN, Mr. Chairman, if the powers and the scope of this bill were not so great, we might dismiss that as an act of drafting redundancy, but the point is that by defining the scope of the act in this bill in that way, what we do is incorporate the definition of hazardous material from the existing Resource Conservation and Recovery Act that defines these materials for the purpose of the current program to regulate currently generated hazardous wastes. Unfortunately, I do not believe that very many of my colleagues have looked at the list of 1,165 different materials, chemical compounds, and trade names, that are on the RCRA list, and therefore qualify as a hazardous substance, and therefore if found in any dump site in the country, bring it under the jurisdiction of the superfund and all the powers I have enumerated.

But, I would like to take a minute of the time of the House this afternoon just to read and put in the Record some of the materials that are considered hazardous under RCRA, and which are found in every waste site, every dump site, every municipal landfill, in the country.

First, let us start with some household names that are going to end up in any municipal landfill:

Mole Death; Mouse-Nots; Mouse-Bid; Mouse-Tox; Pied Piper Mouse Seed; Rat and Mice Bait; Rat-A-Way; Rat-B-Gon; Rat-O-Cide; Rat-Guard; Rat-Kill; Rat-Mix; and Rats-No-More.

The list goes on and on. This is household refuse, but under the definition of RCRA it is a hazardous material, and by incorporation into this act, if it is found in any site, then the superfund authorities take effect.

Let us look at some of the other hazardous materials on the RCRA list: creosote. Creosote is part of every railroad tie, every telephone pole in the country, and there are hundreds of thousands of them discarded every year. Most of them are thrown in rubbish piles and junkyards that, under the definition of this act, is hazardous material and it brings superfund into play.

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But under the definition of this act it is a hazardous material and it brings the superfund into play.

Let us try another item on the RCRA list: Methanol. That is a chemical name, but it is rubbing alcohol. Every family uses it, and every family throws it away everyday, and, therefore, it is in every municipal dump in the country. That is another "hazardous material" that this superfund is going to take care of.

Then we have naphthalene. That is another chemical name, and what is that? It is mothballs. Every family throws that away everyday, and it is found in every municipal dump in the country.

The one that troubles me is formaldehyde. That is used in every laboratory in the country, and it is in every high school biology lab. It gets thrown away, and that brings another site under the scope of the bill before us.

The one that puzzles me the most is saccharin. That is on the list of hazardous materials under the Resource Conservation and Recovery Act. We eat it, we use it in our daily diet.

In addition to all this, everybody who throws away an empty bottle of Pepsi Cola or Diet Pepsi is contributing to the accumulation of hazardous waste in the local dump, and that creates the possibility for EPA to swing into action under the superfund. The reason I raise this point is that the scope of action is not defined. Everthing is covered under this bill. The EPA has plenary power, and there is absolutely no guidance as to where all these costly activities to clean up hazardous waste will be triggered.

Another point I want to make today is that we have not defined the problem. We have heard all the wild statements and discussions, and there is a great numbers game going on as this escalates.

A while back EPA said there were 30,000 to 50,000 sites in the country that contained hazardous materials, that contained a threat to public health.

We checked on that, and it turned out that the report was made by a contractor who simply accumulated estimates from regional offices, so that estimates of 30,000 to 50,000 sites turned out to be of no value whatsoever, as the Eckhardt subcommittee indicated.

In recent days we have received a "Dear Colleague" from the gentleman from New Jersey (Mr. Florio) and the gentleman from Oregon (Mr. Ullman) which indicated that there are 7,000 sites EPA had identified on which we need to have this fund to take action.

How does a site get on that list of 7,000? Somebody picks up a phone out there and says, "I think there might be a chemical that we have nearby, and I think that somebody ought to look into it."

If we take a breakdown of those 7,000 on the list, we find out that 4,000 were not even considered worthy of investigation by EPA. That cuts this list down to about 3,000 right there. If we look at the 3,000 that were considered worthy of investigation, we find that they only did 1,500 on-site investigations because they were told that in the other cases there was no need to proceed.

In the 1,500 cases where they had done on-site investigations, they only found 397 that had hazardous materials in sufficient quantities that there might be a need for some kind of cleanup and remedial action.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Stockman) had expired.

(By unanimous consent, Mr. Stockman was allowed to proceed for 1 additional minute.)

Mr. STOCKMAN. Mr. Chairman, if I may proceed, in those 357 cases, EPA has made a determination in only 65 cases that there was a need to proceed under the authorities it had or in conjunction with State law enforcement agencies.

I am not trying to minimize the problem. I am trying to put it in a proper perspective. I am trying to point out to the House that, with this substitute, State attorneys general and State EPA officers are fully capable of moving in cases where we have inactive or abandoned sites and in cases where we have landowners who are financially capable of undertaking the necessary clean-up action.

So my amendment simply creates State programs and gives them half a billion dollars in Federal money and technical assistance to allow the number of site problems that we have to be cleaned up in an effective way without creating a whole additional regulatory monster with unlimited powers to dig up every municipal dump in the country, because that is exactly what the bill does.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Stockman) has again expired.

(On request of Mr. Rousselot, and by unanimous consent, Mr. Stockman was allowed to proceed for 3 additional minutes.)

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. STOCKMAN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague's yielding, and I appreciate his warning the House that this legislation appears to be another bureaucratic reach-out for authority, as he has suggested, in some cases unnecessarily.

Let me ask, where did this list come from? How many items are there, 1,100? Where did this list come from?

Mr. STOCKMAN. Mr. Chairman, the EPA keeps an inventory, I would say to the gentleman, of hazardous sites. There are 7,000 locations listed on that inventory.

Some Members of this body waved that list around to indicate that there is a considerable threat in every corner of the country facing us. The point is that well over 90 percent of those pose no threat whatever, after investigations have been carried out to find out the exact nature of the problem.

There are a few hundred sites that we need to address. I think the States can do that with the financial assistance that my amendment will provide.

Mr. ROUSSELOT. Mr. Chairman, let me ask, does the gentleman think that the Federal Government will do as well in this field as it has done with, say, Amtrak?

Mr. STOCKMAN. Well, that is an open question. But I would say to the gentleman that unlike the cases of air emissions, air pollution, and water pollution, where we have pollution crossing State lines and we need a Federal role so that we have equal standards in every State, here we are dealing with abandoned, inactive waste sites that were created because of improper disposal in the past. Those sites are not going to go away. They are not going to cross State lines. They are in some State's back yard or some municipality's back yard, and every State and every municipal area has ample power under the State law or the common law to move in those cases where public health is threatened.

We do not need to create a huge, additional new piece of legislation for investigations or cleanup under the operation of EPA. The authority is there, and this just gives them some help.

Mr. Chairman, let us give the States a little help, even though they do not need it, and encourage them to move a little faster.

Mr. ROUSSELOT. Mr. Chairman, the claim is often made that State governments do not act responsibly and carefully in these kinds of areas. In the case of disposal sites of this nature, do we have adequate State laws?

Mr. STOCKMAN. Mr. Chairman, I would say to the gentleman that in many cases we do. I would give a great example in my own State.

If we read the horror stories that are put out in order to drum up a case for this, they always mention Montague, Mich., and this Hooker Chemical site in which we had huge quantities of potential chemicals that were leaching down to the water supply and threatened the public health.

Two years ago the State of Michigan filed a suit in court. They sued and achieved a $15 million out-of-court consent decree for Hooker to move in and clean that up, using the most advanced measures available to insure that there would be no threat to nearby residents or to the environment. That was done without this superfund and without any Federal involvement.

The State Attorney General said that people were threatened and that we would move in. There was a financial settlement made, and it was taken care of. I would give that example to the gentleman as an example of a situation that was taken care of where horror stories were put out.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Stockman) has again expired.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute.

Mr. Chairman, let me just, before making my remarks in opposition to the amendment, point out that the gentleman from Michigan (Mr. Stockman) just gave a good example where a problem occurred in his State and it took 2 years for the appropriate local agency to respond. That is part of what this legislation is all about.

Make no mistake about it, this is the most important move we will have today, and it will determine whether we will have a piece of legislation to deal with the problem of abandoned, hazardous waste sites or whether we will not. This substitute is really a preservation of the status quo. It provides a little more money for the preservation of the status quo, and the status quo is totally inadequate. The authority does not exist on the part of anyone to deal with this problem.

We can go into details, and perhaps we will give examples of where we have instances of materials that were acknowledged to be toxic being emitted into underground water supplies, into drinking water supplies of a municipality and there was not anyone who could do anything without going to court and taking 2 years worth of litigation to accomplish anything.

In my own State, in Elizabeth, N.J., this type of litigation was finally determined, and there was an order given, but the person was not around any more and there was no money. We had a situation where we had a possible and potential catastrophe.

But the legislation we are talking about today is legislation which is designed for having authority in the fund. It does not create a new bureaucracy. As a matter of fact, it is calculatedly designed to minimize bureaucracy, providing the opportunity and the requirement for local response and State response and Federal moneys to go to the States in a way that the gentleman is talking about.

Let me not go into all the details in trying to respond point by point to all the points the gentleman made. Suffice it to say that his criticism of the definitions leaves something to be desired, because he then encompasses in his amendment the definitions we have in our bill. So he has not improved in the definitions. He has adopted them word for word, and I would suggest to him that he has done that because these are adequate definitions and because I know he would not be citing something that he thinks would be deficient **[Sec. 101].**

Let me try to address briefly the problems associated with the gentleman's substitute. In essence, what he does is to establish a State assistance program for the cleanup of inactive sites. States would be required to develop inactive site response plans in their discretion, which means, of course, that they would have to start from scratch. They do not even have the ability right now in many States to do this, and in fact most States have not inventoried the inactive hazardous sites. We have that covered in this bill. But as of now, a State under this proposal would be required to go out and inventory and set up an agency for the formulation of the response plan, set up the plan, and then go forward hopefully with some money left over after they did all that to start to clean up some of these sites.

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EPA, under this proposal, would provide formula grants to States with approved plans, after we went through all of the time necessary to get those plans formed. The formula that is provided in the gentleman's proposal is based on population and industrial output, which automatically does not have a direct correlation between needs.

I can make reference to one particular site that I have been to in the State of Kentucky, or the Commonwealth of Kentucky, which is not a large State populationwise, which is not primarily an industrialized State, and yet if you have been to the Valley of the Drums, you know of the need for the money to clean up that particular site. And, therefore, that site might not very well have the moneys necessary under this particular type of a plan.

Over and above that, the moneys that would be authorized would require a 20-percent match from the States, and it has not actually been established that the States would have the money to qualify for the moneys to start to formulate these plans.

I think it is also important to note that there is no liability provision in this bill. That is to say that after the State is given this money, formulates its plans, goes out and identifies an area where there is a need for a clean-up, and assuming we found the person who is the wrongdoer, there is no ability to go after that wrongdoer to get back the money necessary to replenish the fund. Accordingly, when the fund is expended, there is no opportunity to go after someone who is even an admitted wrongdoer under this proposal.

The arguments against the substitute are fairly obvious: Time and delay. Time is of the essence in many of these instances. The need is right now. I can point to some 397 sites.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. Florio) has expired.

(By unanimous consent, Mr. Florio was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. Mr. Chairman, EPA is already involved and has identified some 397 specific sites that they are at work on. So we do not have the time to develop these programs.

Many States, quite frankly, are not interested or are not capable of going forward. And they do not want to. They want to defer to the Federal Government.

Now, we have in the bill, as I said before, the requirement that if there is local response capability and desire, the Federal Government is required to provide for contracts and grants to those States that have got the interest **[Sec. 104(c)]**.

Let me bring to conclusion my remarks on this proposal that has been offered by the gentleman from Michigan. The strong liability provisions that are in our bill that are not in his proposal I believe are very important, because we want to induce those who know where these sites are to remedy the sites themselves. If there is no liability provision, they will not have any incentive whatsoever to go forward on a voluntary basis and clean up those sites **[Sec. 107]**.

I would also like to just point out that I have a letter from the National Association of Attorneys General which makes all of the points that I have just made in supporting our approach. That letter is as follows:

National Association of
Attorneys General,
Washington, D.C., September 19, 1980.

MEMORANDUM

To: All Members of the 96th Congress.
Re: Superfund Legislation.

Enclosed please find the Final Report of the National Association of Attorneys General to the United States Congress on the Superfund legislation.

This Report is the result of substantial study by our Toxic Waste Committee and later by state Attorneys General representing diverse political, geographical, and ideological backgrounds. The analysis includes an examination of the major superfund proposals based upon state experience in the area.

Although the Association continues to be concerned primarily about issues affecting enforcement and liability, we address a number of other provisions in the Act that we believe will either have a direct effect on the way in which the states operate in this area or in which previous state experience may be valuable to the current Congressional consideration. We hope that you will give these views serious consideration prior to the final votes on S. 1480 and H.R. 7020.

Thank you for your time and attention.

Respectfully and sincerely,

C. Raymond Marvin.

Final Report of the National Association of Attorneys General to the United States Congress on the Superfund Legislation

I. INTRODUCTION

The problems of toxic waste disposal are exploding, in some cases literally, all around us. The U.S. Environmental Protection Agency estimates that only 10 percent of some 11 billion pounds of toxic waste generated yearly in this country is disposed of in an "environmentally sound manner." The statistics are sobering: a pound of poisonous waste generated every day for every person in the United States. Clean-up of abandoned toxic waste sites is expensive. For example, the Environmental Study Conference reports that New York State will be faced with a $23 million price tag for clean-up at Love Canal. In * * * that cleaning up abandoned hazardous waste sites and others operating under environmentally unsound conditions could cost as much as $44 billion. The impact on human health and safety and the damage inflicted on property and the environment is virtually incalculable.

Congress is now considering legislation that would establish a national superfund. Consistent with other federal environmental protection statutes, the superfund bills would place significant reliance upon the states to enforce environmental quality standards. In most states the Attorney General, as the chief legal officer, furnishes all legal services for the environmental enforcement agencies. Even where state agencies employ their own counsel, the Attorney General usually represents the agency in court and issues formal advisory opinions. In light of this unique role, the state Attorneys General have studied, the superfund legislation over the past 13 months. While the views of individual Attorneys General on specific aspects of the legislation may vary, it is the consensus of the National Association of Attorneys General that the superfund legislation should be enacted in this session of Congress and should:

Provide direct funding to state Attorneys General for enforcement of toxic waste laws;

Confer specific authority to state Attorneys General to take remedial action when disposal sites pose an "imminent hazard" to public health or safety;

Establish liability for past and present owners as well as lessees for abandoned disposal sites;

Establish no statute of limitations for civil liability;

Provide a treble damage remedy for intentional violations;

Discourage use of tax dollars to finance the superfund;

Encourage establishment of regional waste disposal sites;

Require clean-up of sites before compensation is awarded for private property damage; and

Include coverage of oil spill clean-up.

An explanation of each of these points follows.

II. ENFORCEMENT

A. *Direct Funding for State Attorneys General* **[Sec. 111(a) and (c)].**—The mechanics of the superfund legislation will require litigation as a major facet of the overall program and direct involvement by state Attorneys General will significantly enhance effective enforcement. Absent direct funding, the states' ability to litigate will be severely hindered. Litigation support is expensive and state budgets are limited. These cases require well-trained lawyers, skilled investigators, and expert witnesses.

State legislatures cannot be counted upon to appropriate sufficient funds to meet these staggering costs nor can the scarce resources of the U.S. Department of Justice and the Environmental Protection Agency deal effectively with the magnitude of the problem. Thus, the Association urges the Congress to authorize EPA to disperse annually $25–$30 million to the state Attorneys General for enforcement purposes.

State Attorneys General would bring police powers, quick reaction time, and an understanding of local interests to this effort. Furthermore, the Association believes that has been true with federally sponsored programs in the medicaid fraud and antitrust areas, the amount of money recovered in damages will far exceed any federal appropriation.

B. *"Imminent Hazard" Authority* **[Sec. 106].**—In 1976 in the Resource Conservation and Recovery Act (RCRA), the Congress authorized the federal government to take remedial action when a toxic waste disposal site posed an "imminent hazard" to public health or safety. We believe that this authority should also be specifically conferred to state Attorneys General who are the officials most closely involved with environmental litigation in their states and are best able to respond to such an immediate crisis.

For the most part, state Attorneys General have been overlooked as a valuable enforcement tool in the toxic waste area. This has been true both in terms of federal expenditures and federal authority. Since litigation continues to be the most valuable method of closing sites that pose an immediate danger to the public and of recovering damages from those who have harmed the environment, the addition of state Attorneys General to the enforcement effort would significantly augment the current capabilities of EPA in this area.

Some state Attorneys General have already taken significant enforcement actions. Suits filed in Michigan, Illinois, New York, New Jersey, and California are a tribute to the ingenious use of scare resources and, often, limited statutory authority. In some cases the office of the Attorney General has had little more to work with than common law public nuisance authority. The magnitude of the problems associated with toxic waste disposal requires federal statutory support.

III. LIABILITY [Sec. 107]

The Association believes that federal standards of liability are required, notwithstanding state tort law, in order to avoid legal entanglements arising from conflicting state laws. While some states have more sophisticated toxic waste statutes than others, none has all the tools necessary to ensure the proper protection of the public. In some states, strict liability is not applicable in toxic waste cases. In others, prior owners, lessees, generators, or transporters may not be liable for the injury they may have inflicted. Other problems impeding effective enforcement include proof requirements that limit the states' ability to impose liability and inadequate statutory authority in cases of emergency clean-up.

A. *Strict Liability* **[Sec. 101 (32)].**—The Association believes that strict liability should apply to all provisions in the Act. This is not a new concept. Strict liability appears in other federal statutes. The handling of toxic substances is an inherently ultrahazardous activity that involves a risk of serious harm to the public that cannot be eliminated completely even through application of the most stringent precautions. Without the inclusion of broad-based liability, proof problems with regard to proportionate liability will inevitably occur and hamper effective enforcement. Furthermore, imposition of strict liability will have significant deterrent effects for those who generate toxic waste. The Association supports an exemption from strict liability only when the unlawful disposal was specifically directed by an authorized governmental authority or was a result of an act of God or act of war.

B. *Liability for abandoned Sites.*—The Association believes that it is necessary to hold past and present owners as well as lessees liable for damage occuring at an abandoned chemical dump site. Seeking relief against the present identifiable owner (such as the home owners at Love Canal) is not always appropriate since the present owner may be completely unrelated to the prior dumping. The only way to ensure effective enforcement is to make all potentially responsible owners and lessees liable and to allow investigations to determine which owner or lessee is responsible.

C. *Statute of Limitations for Civil Liability.*—The Association opposes the inclusion of a statute of limitations for civil liabilty on the basis that it would impose serious inequities. If the statute is designed to run from the initial date of release or discharge, it will preclude numerous actions due to the long time period between the release of the waste and the full discovery of damages. It is impossible to establish a distinct time period in which one can identify all the problems that occurred or will occur from improper disposal.

The serious problems associated with dumps that are 10–20 years old are just now becoming evident. Since current law varies widely from state to state, it seems only fair, both to society and to those harmed, that a federal cause of action be established. If Congress believes a statute of limitations is necessary as well, we urge that it begin to run only upon passage of the Act or the discovery that a site poses a health hazard, whichever occurs later.

D. *Treble Damages.*—The Association believes that treble damages, analogous to those in the federal antitrust laws, should be a remedy in cases of intentional violations. Treble damages will provide an effective deterrent to improper disposal and will insure that those responsible for chemical spills will pay for clean-up of the site.

IV. SUBSTANTIVE ISSUES

A. *Use of Tax Dollars*: [Sec. 211].—The Association believes that tax dollars should not be used to finance the superfund. Rather, the chemical, petroleum, or other companies that are responsible for creating the problem in the first place should pay for clean-up. Taxpayer subsidies would unfairly force those most likely to suffer personal health and property damages to bear the additional cost of removal.

B. *Disposal Sites.*—This Association believes that it is appropriate for federal, state, and local officials to establish adequate regional waste disposal sites. This will minimize the dangers posed by the long-haul transportation of these materials. The Association believes that it is unsound public policy to transport thousands of gallons of extremely toxic material across the country, with all the risks that imposes, simply because no other waste disposal site is available. As it now stands, the sites designated for disposal are being filled quickly and in a few years will no longer have the capacity to handle the waste generated in this country. Further, wastes must be transported long distances in many cases, thus increasing the risk of accidents related to the transportation of toxic material.

C. *Compensation for Personal and Property Damage* [Sec. 111].—The Association believes that compensation for people who suffer private property damage and could otherwise seek relief through civil litigation must be deferred until adequate funds exist for both clean-up and compensation.

D. *Coverage of Oil Spills.*—The Association believes that since the oil companies will contribute the bulk of the superfund monies and since oil spills do, in fact, cause environmental damage, oil spills should be included in a single comprehensive Act.

I have a specific letter from the National Conference of State Legislatures and the National Governors' Association, which states:

> Since H.R. 7020 was reported by the House Rules Committee, several amendments and substitutes for the original bill have been introduced. Some purport to provide programs more responsive to state needs than the original bill. One in particular, Congressman David Stockman's substitute for H.R. 7020, is characterized as a vehicle to help states protect their own citizens and "water supplies" in a "simple and effective manner." Given our long involvement in promoting Superfund legislation beneficial to the states, we would like to take this opportunity to comment on the deficiencies in this alternative version of H.R. 7020.

And then there are five points, spread over two pages, which, in effect, just give back details that I have just provided. The general categories are:

"There are insufficient levels of funding."

"There is no required contribution from industry."

That is a point that I did not make. In fact, all of these moneys are coming out of the taxpayer's pocket, and that is the argument we had earlier on, that not even industry accepts the responsibility for coming forward with a portion of the moneys.

The third general point: "Appropriations alone do not guarantee availability of funds." That is to say that if there is no liability provision, you cannot get back from wrongdoers moneys to supplement the funds.

"There are no liability provisions." An amplification is provided for that.

And, last: "The formula proposed in the Stockman amendment will not allocate funds where the need exists."

The entire letter reads as follows:

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, D.C., September 23, 1980.

Hon. JAMES J. FLORIO,
Chairman, Subcommittee on Transportation and Commerce, House Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR CONGRESSMAN FLORIO: After more than a year of hearings, markups and negotiations by three House Committees and the Rules Committee, H.R. 7020, the Hazardous Waste Containment Act of 1980, is scheduled for floor consideration by the full House of Representatives. This bill is the result of months of negotiations involving all interested parties. It represents a careful balancing of competing interests. The National Governors' Association and the National Conference of State Legislatures have long favored legislation to assist states in addressing the problem of hazardous substances. Current policy of both organizations supports the major provisions of H.R. 7020, including the requirement that industry contribute to the fund. NGA and NCSL also strongly endorse the Ways and Means Committee amendment.

The Governors' Association and the Conference of State Legislatures have worked closely with all the committees having jurisdiction over this bill. We have sought to fashion a bill that is at once responsive to state needs and fair to all parties. We have met with sympathy and cooperation on the part of all committee members and staff, especially from the staff and the chairman of the Subcommittee where this legislation originated Most of our concerns have been addressed in the Commerce Committee bill and the Ways and Means amendment now before the House, and we wish to reiterate our support for rapid passage of the Hazardous Waste Containment Act.

Since H.R. 7020 was reported by the House Rules Committee, several amendments and substitutes for the original bill have been introduced. Some purport to provide programs more responsive to state needs than the original bill. One in particular, Congressman David Stockman's substitute for H.R. 7020, is characterized as a vehicle to "help states protect their own citizens and water supplies" in a "simple and effective manner." Given our long involvement in promoting Superfund legislation beneficial to the states, we would like to take this opportunity to comment on the deficiencies in this alternative version of H.R. 7020.

1. *There are insufficient levels of funding* [Sec. 221(b)]. The Stockman substitute provides only $75 million for FY 1981. This is inadequate even to begin to address the problem. The Chemical Manufacturers Association estimates that an average of $1 million is required to clean up an abandoned dump site (other estimates run several times higher). EPA currently lists 400 sites as requiring attention. Thus the Stockman amendment would, at best, provide a response to less than four percent of known problem sites its first year. Furthermore, the cumulative funding level of the Stockman Amendment is only $600 million—a figure we find sorely inadequate. With new dangerous sites being discovered weekly, NGA and NCSL support at a minimum the $1.2 billion total contained in the Ways and Means Committee amendment.

2. *There is no required contribution from industry* [Sec. 211]. All major House and Senate versions of Superfund legislation contain provisions for a substantial industry contribution to the Superfund. Congress has recognized that the chemical industry which has benefitted from the absence of adequate disposal standards in the past, bears some responsibility to assist in cleaning up old dump sites.

The Love Canal location has thus far required tens of millions of dollars of remedial action. The State of New York has spent over $40 million, the federal government $5-10 million, and Hooker Chemical less than $1 million. The public, through federal, state, and local taxes, cannot continue to incur the full cost of cleanup. Industry must contribute significantly to the response fund for hazardous waste.

3. *Appropriations alone do not guarantee availability of funds* **[Secs. 211 and 221].** Reliance solely on federal appropriations to provide the funds needed to cleanup abandoned dump sites is problematical. Competition for scarce federal dollars is likely to become even more intense in the coming years. There is no assurance that the sums necessary will be made available. States need guaranteed continuity of full funding if they are to devise a program and hire the personnel necessary for remedial action at abandoned dump sites. Assured funding at the levels necessary can only be achieved through a combination of an industry-based tax and appropriations. The legitimacy of an industry fee was previously acknowledged by the House of Representatives in its version of HR 85 which passed 288-11.

4. *There are no liability provisions* **[Sec. 107].** In order to allow recovery of Superfund expenditures and to provide an incentive for proper care to all parties connected with hazardous waste, all major Superfund bills contain rigorous liability provisions. NCSL and NGA support the applications of liability schemes to all parties, including states and localities when circumstances merit. No one disputes the principle that those who contribute to the problem should share in the cost of cleanup. Imposition of a comprehensive liability provision will assure that this principle is observed.

5. *The formula proposed in the Stockman Amendment will not allocate funds where the need exists* **[Sec. 105(8)].** A formula based on population and industrial production ignores such factors as, where toxic waste is actually located and the severity of individual cases. Representative Stockman's memo which accompanied the substitute for HR 7020 acknowledged that the formula was "not an exact proxy for the location of abandoned hazardous waste sites." Given the limited resources available to address a massive problem, priorities must be established and the most threatening sites corrected first. An inflexible formula for distributing response funds will further complicate an already difficult national problem.

The National Governors' Association and the National Conference of State Legislatures have established passage of a Superfund bill as a major environmental priority for this session. We have worked with Congress, Governors' offices, State Legislatures and Local Officials to formulate effective legislation to permit a rapid and comprehensive response to the problem of hazardous waste. The legislation reported by the Commerce Committee and the amendment offered by the Ways and Means Committee represent the fruition of our efforts.

Our organizations urge all members of the House of Representatives to support adoption of this essential legislation.

Sincerely,

Benjamin L. Cardin,
Chairman, NCSL State-Federal Assembly;
Speaker, Maryland House of Delegates.

Stephen B. Farber,
Executive Director, National Governors' Association.

Mr. Moffett. Mr. Chairman, will the gentleman yield?

Mr. Florio. I yield to the gentleman from Connecticut.

Mr. Moffett. Mr. Chairman, as a member of the full Commerce Committee, I want to applaud the work of the subcommittee chairman on this matter.

The gentleman from Michigan implied, I thought, that we had not done quite enough work on this issue. I cannot remember an issue where we have done more work. The gentleman has done the bulk of the work, he and his subcommittee; but Congressman Eckhardt's Subcommittee on Oversight and Investigations and the subcommittee that I am privileged to chair on Government Operations, and a variety of others, have been looking into this.

As the gentleman from New Jersey indicates, we do not have a great deal of time. It is not as though we are just seeing small indications or scant evidence of this problem. My own subcommittee is about to release a report on drinking water contamination that relates directly to this, which finds that with regard to 26,000 industrial sites around the country, hazardous waste sites, 35 percent, or about 9,100 of the total impoundments are unlined, which potentially allows contaminants to infiltrate unimpeded into the subsurface; 7,800 or 30 percent, of those unlined impoundments are sitting directly on top of groundwater sources with no barrier reported between the waste and the groundwater, and 750 of those sites, or about 2,600 are unlined, sitting directly on top of groundwater, and within 1 mile of the drinking water supply well.

So it is time to move on this, and I think the gentleman is correct: This is the key vote.

I do not think there are more than 30 or 35 Members of this body, I would guess, who are planning on voting against the total measure here, and I want to say that if you are going to vote for the total measure, make sure to vote against the Stockman amendment.

Mr. DOWNEY. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. Florio) has expired.

(On request of Mr. Downey and by unanimous consent, Mr. Florio was allowed to proceed for 3 additional minutes.)

Mr. DOWNEY. Mr. Chairman, I think the gentleman has laid out very carefully that this is a national problem and, if anything, the studies that we have seen, at least in the Ways and Means Committee, indicate that the problem is probably larger not smaller, than the initial studies have pointed out; that, given the fact that this is a national problem, it is important to understand that the Federal Government can work. We can develop a body of expertise within the EPA to have a response team to do the sort of sophisticated testing that will not be done by the various State agencies.

It is important that we have one group of experts who can go out and keep an inventory across this country of the problems.

Also, some of these problems occur between State lines. How are we going to determine which State is responsible when the jurisdiction may be in doubt?

I would also like to ask the chairman of the subcommittee that if the House should vote for the Stockman amendment, is my understanding correct that this would remove the Ways and Means Committee amendment from consideration and preclude us from offering our amendment, which increases the size of the fund, which changes the share from 50-50 to 75-25 **[Secs. 211 and 221]**?

Mr. FLORIO. That is my understanding; that if, in fact, the Stockman amendment would pass, it would preclude the offering of the Ways and Means Committee amendment.

Mr. DOWNEY. That is shocking. The thought that somehow we are only going to have $600 million to deal with that is grossly inadequate. I would hope that the membership would resoundingly reject the Stockman approach which denies the essential reality that this is a massive national problem that needs to be dealt with in a very large and expedited fashion.

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from New York.

Mr. LAFALCE. Mr. Chairman, first I want to commend the gentleman from New Jersey for what I think has been a magnificent effort this past 2 years in trying to develop a superfund approach to deal with the problem of abandoned hazardous waste sites that would not only deal with the problem, but pass the Congress.

Insofar as adequate consideration of this measure is concerned, as the gentleman from Connecticut (Mr. Moffett) has said, I do not think any bill has ever received so much study. I think that I personally have testified at least before 12 different committees on this issue alone. This bill is probably the most important environmental bill of the past decade and probably the most important environmental bill of the next decade.

The Stockman amendment would simply gut it. It must be defeated.

Mr. **Florio**. I thank the gentleman for his remarks.

AMENDMENT OFFERED BY MR. DANNEMEYER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STOCKMAN

Mr. **Dannemeyer**. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Dannemeyer to the amendment in the nature of a substitute offered by Mr. Stockman: Page 5, after line 18, insert the following:

"(4) mandating solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by non-governmental entities, except that no proposal shall be analysed if it involves direct or indirect costs to the United States government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law."

Page 5, strike line 19 and all that follows through line 22 and insert in lieu thereof the following:

"(5) requiring recommendations, based on the findings resulting from the application of subparagraph (4) of this subsection, as to the appropriate balance (including the respective levels of funding) between public and private sector involvement in the siting, design and operation of new hazardous waste management facilities.

Page 5, line 23, strike the numeral "5" and insert in lieu thereof "6".

Page 6, line 15, strike all that follows after the word "subsection" through line 16 and insert in lieu thereof a period.

Page 6, strike line 17 and all that follows through line 19 and insert in lieu thereof "(2) is otherwise generally inconsistent with the purposes of this part."

Mr. **Florio** (during the reading). Mr. Chairman, I reserve a point of order against the amendment.

The **Chairman**. The gentleman from New Jersey (Mr. Florio) reserves a point of order.

The Clerk will continue reading the amendment.

The Clerk continued the reading of the amendment.

Mr. **Dannemeyer** (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The **Chairman**. Is there objection to the request of the gentleman from California?

There was no objection.

The **Chairman**. Does the gentleman from New Jersey (Mr. Florio) reserve a point of order?

Mr. **Florio**. Mr. Chairman, I withdraw my reservation of a point of order.

Mr. **Dannemeyer**. Mr. Chairman, I shall be brief inasmuch as I have covered a good deal of the ground this amendment covers earlier today. Basically, the amendment does two things. First, it requires the States, in developing the plans they must submit to the

EPA Administrator, to solicit and analyze proposals from private enterprise for the construction and operation of hazardous waste management facilities at no cost to the U.S. Government. And second, it closes what could be a major loophole that would otherwise permit the EPA Administrator to dictate to the State the exact nature of the cleanup plan the State is to develop.

With respect to requiring States to ascertain the extent to which private enterprise might go into the hazardous waste cleanup business on a profitmaking basis, a similar provision has been included in the Commerce Committee version of this bill. And with good reason. For if private enterprise is willing to do the job without taxpayer subsidy, as appears to be the case in Houston, Tex., then why should the Federal taxpayer be asked to foot the bill unless there is no other alternative? Furthermore, ascertaining the extent of private enterprise interest would not delay completion of the State plan in any way; 6 months is plenty of time for the State to solicit and analyze bids in construction and operation of hazardous waste facilities.

As for the aforementioned loophole, the difficulty lies in the definition of the term "cost-effective," or more precisely, the lack of definition. As long as the EPA Administrator interpreted the term judiciously, there would be no problem other than the amount of time it would take to make such a determination. But, if the EPA Administrator were to decide that any expenditure other than the one EPA liked best was nonreimbursable, the effect would be to give EPA the power to dictate the cleanup procedure down to the last detail. To avoid that possibility from occurring, my amendment eliminates a finding of cost-ineffectiveness as grounds for rejection of a State plan by the EPA Administrator.

Mr. Chairman, it is my feeling that both these changes are consistent with the thrust of the amendment offered by the distinguished gentleman from Michigan (Mr. Stockman) and I urge that they be adopted.

Mr. Chairman, I yield back the balance of my time.

Mr. **Florio**. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment as I understand the amendment.

If the gentleman from California would yield for a question, is it my understanding that what the gentleman is proposing is that there be included in State plans that would be authorized under the proposal of the gentleman from Michigan (Mr. Stockman), a direction that there be private disposal facilities constructed?

Mr. **Dannemeyer**. Mr. Chairman, will the gentleman yield?

Mr. **Florio**. I yield to the gentleman from California.

Mr. **Dannemeyer**. No, not the direction that there be private disposal facilities constructed, but merely that an opinion be solicited as to whether or not private enterprise is interested in building disposal facilities in those States, that is all, just requiring them to inquire if there is an interest to build them.

Mr. **Florio**. If I may reclaim my time. I would rise in reluctant opposition to the gentleman's amendment primarily because it is an amendment to an amendment that I regard as not helpful. But the major thrust of the gentleman's concern is already included in our bill. We have proposals for research and development, and we have proposals for studying of sites for facilities [Sec. 301] and I can tell the gentleman—and it is on the record in our hearings—that I am totally committed to the idea that private enterprise should be the key on developing an appropriate disposal industry. There will be or may be other amendments this afternoon that do not agree with that thought. I hope the gentleman will help me to defeat those amendments and say we shall have a series of State-constructed facilities.

I agree with the gentleman's thrust that we should be looking to private enterprise to develop the industry of hazardous waste disposal, but I am just not sure his approach is one that is desirable at this point and certainly is not desirable as an amendment onto the Stockman amendment.

Mr. DANNEMEYER. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from California.

Mr. DANNEMEYER. It puzzles me a little, because the gentleman from New Jersey has correctly pointed out that the sense of the amendment to the Stockman amendment is in the basic bill pending before the committee, and it is my desire just to put this amendment offered by the gentleman from Michigan (Mr. Stockman) into the same posture on this point that the basic bill is. It would seem to this Member from California that that is not an unreasonable request.

Mr. GORE. Mr. Chairman, I rise in opposition to the substitute amendment.

I would just say in response to my colleague from California, that if the Stockman substitute is defeated then I would hope we would feel free to vote for the bill because the thrust of the gentleman's amendment is included in the bill as it is now drafted.

Now, let me just state at the outset, Mr. Chairman, that I have the utmost respect for my colleague from California and for the gentleman from Michigan. Having served for some time on the Commerce Committee with them, I can testify that their questions often prompt us to perfect legislation, and occasionally we even find ourselves in agreement.

On this occasion, however, the substitute offered by the gentleman from Michigan would really result in gutting this legislation entirely. It has no organized support from any of the groups or parties affected by this legislation. The industry does not support it. The State governments do not support it. The attorneys general do not support it. No one that I am aware of supports it other than the gentleman from Michigan. And I think that there are reasons for that. Let me state them:

The gentleman has said that we are seeing the House stampeded into a solution for this problem.

On the Subcommittee on Oversight and Investigations not only in this Congress, but in the last Congress, we have held 18 hearings, Mr. Chairman, on this problem. We have documented this proposal so thoroughly that the case for remedial action is beyond any reasonable dispute. Three years is a long time, Mr. Chairman, to document this problem. I would not characterize it as a stampede.

Second, my colleague implies that perhaps the size of the problem has been overstated. Again, I would disagree. I think, if anything, the size of the problem has been understated.

Above and beyond those points there are some serious deficiencies with the substitute itself.

No. 1, it does not ask for any contribution whatsoever from the industry which has primarily created this problem [Sec. 211].

It simply asks the Federal Government to give more money to the States. Second, it does not have any liability standards [Sec. 107].

Third, I think it is ironic that the gentleman places so much faith in State governments when he has so little confidence that the Federal Government can address the problem at all.

A number of States, among them Michigan, California, New York, Kentucky, and New Jersey, have repeatedly testified before the Congress concerning the severe limitations on the ability of the States to deal with hazardous waste sites and concerning the need as they see it, for Federal legislation.

Fourth, as my colleague from New York (Mr. Downey), who played such a leadership role in the Committee on Ways and Means, pointed out, many of these sites cross State lines. What would we do on such an occasion under the Stockman substitute?

I would urge my colleagues on this key and important vote to cast a resounding "no" against the substitute offered by my well-meaning colleague from Michigan. Also I would counsel a "no" vote on the amendment to the substitute offered by the gentleman from California.

The important and key vote is a "no" on the Stockman substitute.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Michigan.

Mr. STOCKMAN. Let me say to the gentleman from Tennessee I do not discount for a minute the nature of the problem, the enormous amount of work that the gentleman himself has contributed to documenting it over the years, the fact that we have some firm idea that there are hundreds of sites and there might be additional ones beyond that.

I would submit to the gentleman and this House that there has not been any evidence offered that the State governments in most of the cases are not equipped to deal with the problems.

I read the committee report. They said, "Evidence of inadequate local and State response."

Well, what was listed in the committee report under that, I will ask the gentleman? There were the cases, one of which occurred 7 years ago; another of them which could not occur now under RCRA and the third one was Love Canal. That is the entire sum of the evidence that has been adduced that has been presented to show that under existing State law, under common law and under the fact that States have moved on this problem, the gentleman from New Jersey said the States are not ready, here is a listing compiled by the National Association of State Legislatures of every State in the Union that has a varying degree of legislative authority and funding available in this area.

□ 1650

What I am asking the gentleman is for some more specific indication as to why we must move this problem.

The Chairman. The time of the gentleman from Tennessee (Mr. Gore) has expired.

(At the request of Mr. Stockman, and by unanimous consent, Mr. Gore was allowed to proceed for 3 additional minutes.)

Mr. Stockman. Mr. Chairman, will the gentleman yield further?

Mr. Gore. I yield.

Mr. Stockman. I would ask the gentleman for the more specific information which would indicate that this one problem, of all the problems we face in the country today, could not be handled by the States if we give them some encouragement. The gentleman will agree, we cannot do everything, referring to the Congress and the EPA.

Mr. Gore. Mr. Chairman, the gentleman himself cited the National Conference of State Legislatures, which has indicated that the States support the bill as it is written and specifically notes their opposition to the substitute of the gentleman from Michigan; but this is not the only occasion where State officials have said that. They have testified on a number of occasions before the Congress. For example, we had such testimony before the Oversight and Investigations Subcommittee.

The gentleman points out that the committee report accompanying this bill only cites a limited number of cases, but we have had 18 hearings in two Congresses before the Oversight Committee of the Commerce Committee. The evidence is overwhelming. We have had evidence taken from the State of Michigan. We have had officials from the State of Michigan talk about their inability to proceed under the current State law in a timely and adequate manner.

We have had testimony from California.

We have had testimony from Kentucky, from New Jersey State officials; from States throughout this country who have said over and over again that this is a Federal problem that must be addressed at the Federal level.

Mr. Stockman. Mr. Chairman, would the gentleman yield one further time?

Mr. Gore. I would be glad to yield to the gentleman.

Mr. Stockman. I understand what the gentleman is saying; but can the gentleman recall any problem in his entire service here where the State governments have not come in and said that they could use some Federal money to help them solve this problem?

Mr. Gore. I cannot remember in my service in this body a single other time when the States were presented with a choice between two bills, one of which addresses the problem at the Federal level and the second of which says the Federal Government will give money to the States and turn over the responsibility to them—like the gentleman's substitute—where the States have said, "We recognize the limitations that we have and we recognize this is such a severe problem and so national in scope that we prefer a Federal approach to this problem, even though the alternative would result in giving us money and turning over the responsibility for it."

No. I cannot recall another such occasion. There may be one, but not within my memory.

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to my colleague, the gentleman from New York.

Mr. LAFALCE. I thank the gentleman for yielding.

I think another reason why this amendment must be defeated, another reason that the States cannot handle it, is that it is a problem that is nationwide in scope and is deserving of a comprehensive legal framework if it is to be attacked and met.

We cannot develop a comprehensive legal framework if we allow the States to approach it and work their own wills.

The CHAIRMAN. The time of the gentleman from Tennessee (Mr. Gore) has again expired.

(By unanimous consent, Mr. Gore was allowed to proceed for 1 additional minute.)

Mr. LAFALCE. Mr. Chairman, if the gentleman will yield further, we cannot have this comprehensive approach if we allow each State to work its own will and come up with some patchwork quilt across the entire United States of 50 differing laws, 50 differing laws dealing with the taxation of the oil and chemical companies, 50 differing sets of laws dealing with the disposal practices, 50 differing laws dealing with every single aspect of this problem.

We might as well forget about a comprehensive approach to solving it.

Mr. GORE. And again, no responsibility whatever assigned to the industry that has created the problem.

I ask for a "no" vote on the substitute amendment, Mr. Chairman.

Mr. MADIGAN. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the substitute and the amendment of the gentleman from California (Mr. Dannemeyer).

Mr. Chairman, at the outset, to address the question as to whether or not there is a problem, I would like to quote from the first paragraph of a letter written by the vice president of the U.S. Chamber of Commerce, which says:

> The business community is deeply concerned about problems resulting from certain inactive hazardous waste disposal sites. We believe that sites which present a hazard to human health or the environment should be contained or cleaned up quickly and effectively. We believe that H.R. 7020 as reported by the House Committee on Interstate and Foreign Commerce is a substantial improvement over prior legislative proposals and addresses the inactive hazardous waste sites problem and contains scope and liability provisions which would protect both public health and the environment.

If I may read the last part of that letter, it says:

> The undersigned organizations strongly urge you to support H.R. 7020.

It is signed by the American Mining Congress, the American Paper Institute, the American Textile Manufacturers Institute, the Chamber of Commerce of the United States, the Chemical Manufacturers Association, the Edison Electric Institute, the National Association of Manufacturers, the National Forest Products Association, the National Painting and Coating Association.

With regard to the question of whether or not the committee bill would impose upon American industry undue and unnecessary regulations, let me just observe that that is not a list of organizations known ordinarily to be advocates of Government regulation. It is in this instance a list of American business organizations that clearly recognize that there is a serious problem and that the Congress of the United States needs to respond to that problem.

The gentleman from Michigan has artfully articulated some of the shortcomings of any legislative proposal; however, I believe that his amendment would not be helpful to dealing with the problem of hazardous waste sites. Certainly the list of chemicals that the gentleman has read here today suggested that any legislative proposal could be held up to ridicule; but we are not talking here about a single bottle of rubbing alcohol or a small 2-ounce package of rat killer that somebody is going to put behind a refrigerator. We are talking about hundreds of 55-gallon drums of these chemicals that are leaking into the underground water supplies in the United States of America. Certainly people use those chemicals, but they do not mix them in large quantities in their drinking water.

I concur that the States must play a major role in the cleanup effort. I would point out that H.R. 7020 is structured to keep the Federal role to a minimum. The States are full partners in the committee bill. EPA can step in only if the responsible party cannot be found or cannot act and only if the State or local government does not respond.

I would like to point out that Robert A. Roland, president of the Chemical Manufacturing Association, stated in a letter in this morning's Post, and I quote:

> We believe the Federal Government should have the means to act immediately to protect the public and the environment from the clear dangers these failing sites pose.

Mr. Roland concluded by stating:

> H.R. 7020—

The committee bill—

> Comes closest to what is really needed to remedy the problems failing dumps impose.

The substitute of the gentleman from Michigan would let the irresponsible dumpers in this country off the hook completely. The issue here, the real difference between this substitute and the committee bill, is that the gentleman's substitute relieves the dumpers of any responsibility. It would become the responsibility of the taxpayers to clean up the mess of the dumpers. The result of agreeing to the substitute would be to put the House of Representatives in the position this evening of saying that they want to do less than the chemical manufacturers say is desirable, less than the Chamber of Commerce says is necessary and less than the National Association of Manufacturers say is both desirable and necessary. I do not want the House of Representatives to be put in that position this evening or any other time.

I would urge the defeat of the Stockman substitute and support for the committee bill.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. Moffett, and by unanimous consent, Mr. Madigan was allowed to proceed for 1 additional minute.)

Mr. **Moffett**. Mr. Chairman, would the gentleman yield?

Mr. **Madigan**. I would be happy to yield.

Mr. **Moffett**. Mr. Chairman, I simply want to congratulate the gentleman for his remarks; but I think more importantly his work on this legislation throughout.

Both of us know the gentleman from Michigan as a brilliant member of our committee. I do not use that word lightly or insincerely. Both of us know that there are times clearly when the burden of Federal intrusion and regulation is clearly so high that it outweighs any benefits that might be obtained from Federal intrusion.

The gentleman and I may disagree on when that point comes; but the fact is this is not one of those instances where the burden of Federal involvement is going to be such as to outweigh the benefits. I think the gentleman knows that to adopt the substitute would be like saying that we have had a series of terrible tornadoes all over the country and we are going to let the States deal with them or have a year or two of study.

☐ 1700

Mr. **Eckhardt**. Mr. Chairman, I move to strike the requisite number of words and rise to speak against the substitute.

I first want to compliment the distinguished chairman of the subcommittee and the ranking minority member for presenting a bill that seems to have such wide support. I think it has that support because it deserves it.

There never was a matter that received more thorough examination in Congress than this matter has received. My subcommittee, of which the gentleman from Connecticut (Mr. Moffett) is a member, as is the gentleman from Tennessee (Mr. Gore), who has really been a pioneer in this subject even before I became concerned with it when he served on that subcommittee under my predecessor, Chairman John Moss, has given this subject matter 18 days of hearings for consideration. We identified two problems.

First, we must find out the magnitude of the problem, find out where these dangers exist. The gentleman from Michigan (Mr. Stockman) has very well pointed out that we have not yet determined the full magnitude of the problem. But I would suggest, contrary to his implications, that the problem is probably greater than it has been described.

For instance, when we examined where hazardous waste had been distributed by sending a questionnaire to 53 of the major chemical companies, we were only touching the tip of the iceberg. Actually, those companies were probably the most responsible disposers of hazardous waste in the country. Yet we received information that raises many serious questions.

The second thing that needs to be done is not merely to throw public funds into the cleanup of wastes distributed illegally or improperly by persons who have distributed them in the past and in the present. The second thing we must do is to create a disincentive to continue to distribute and dispose of hazardous wastes in an irresponsible way.

The gentleman from Michigan's amendment does not address this second question at all, except to admonish the Administrator to advise the attorneys general of the States as to how they might work out some kind of program to recoup some of the funds which they may have expended.

Mr. **Stockman**. Mr. Chairman, will the gentleman yield on that point?

Mr. **Eckhardt**. Surely, I am glad to yield to the gentleman from Michigan.

Mr. **Stockman**. The point about the disincentive, that we need to put on a fee or some kind of retroactive liability is raised over and over again. But is it not true I would ask the gentleman, that every industrial generator of hazardous wastes today, or beginning in November, will be under the very tight regulations of RCRA regarding how they dispose of wastes, whether they sell it to transport, what type of facility that it can be put in, and that this is the most powerful incentive that one could possibly impose, and that we are no longer talking about a future problem, we are only talking about abandoned sites. Current and future incentives are not relative.

Mr. **Eckhardt**. No. As a matter of fact, we are talking about both abandoned sites and sites with interim permits in the section that deals with liability for releases [Sec. 107]. That section reads: "Except for a release, or threatened release, of hazardous waste * * *" resulting from "an act of God," and certain other exceptions, "where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release."

Subsection (B) establishes the proportionate liability of those who caused the danger. We never addressed this question in such detail in Federal law. This is precisely what we ought to do.

The gentleman from Texas, who is speaking, would have gone much further than that. I would have provided, as I did in my original draft of a bill that was introduced, and about a third of it I think was then encompassed in this bill, I would have provided for perpetual liability on the creator of hazardous waste. This bill does not go quite so far, but it does provide for responsibility for anyone who contributes to the release, and it makes them strictly liable for the cost of cleanup.

If we follow the other approach, what we do is throw Federal money into the hands of the States.

The **Chairman**. The time of the gentleman from Texas has expired.

(By unanimous consent Mr. Eckhardt was allowed to proceed for 2 additional minutes.)

Mr. **Eckhardt**. If we turn over funds to the States, what is the incentive of the States to recover such money if they are getting it from the Federal Government? The incentive is always to the Federal Government to keep the fund intact so that it may be available for this enormous problem of cleaning up wastes all over the Nation. If we give it to the States they may or they may not regain the funds by suing those who are really responsible.

Besides that, under the Stockman substitute, the basis of liability will be that which the State has imposed. It is not defined uniformly in State law. Yet the question we are addressing is a uniform Federal question.

In our hearings, for instance, we found about five States with reasonably good laws with respect to hazardous wastes. I think California was probably the best. I would say that Texas, because it has faced this problem for a long time, might well be second.

New Jersey also was at the top of the list of States. But even in my State of Texas we discovered that the law was not well enough drawn to trace certain extremely dangerous wastes, including cyanide, to roads where road oil contaminated with nitrobenzene and cyanide was put on the roads of an addition, and we could not find out how the provisions in the Texas law failed to trace these toxic materials through a very important and responsible waste disposal company, Browning Ferris. We could not find how that poison got to those roads. The State law was totally inadequate to solve the question.

In addition, for example, we found that where New Jersey has a strict law, it frequently results in the generators of hazardous waste dumping their waste in Pennsylvania. If there ever was a question which is national in scope and which called for a national solution, I believe this is the question.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(At the request of Mr. Stockman and by unanimous consent, Mr. Eckhardt was allowed to proceed for 2 additional minutes.)

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Michigan.

Mr. STOCKMAN. The gentleman makes a number of valid points that I would not argue with. But the gentleman is talking about current output of hazardous wastes. We are not addressing that here today and the gentleman knows that. The gentleman is talking about problems that will be dealt with in a very tough and effective way under RCRA.

I agree if New Jersey has a tough law for current generators of waste and Pennsylvania does not, the stuff is going to move at midnight to Pennsylvania. That is not the issue before the House. RCRA takes effect in November. It applies to every generator of industrial wastes in the country and every transporter and every receiver or disposer. The gentleman helped write that law.

Mr. ECKHARDT. Is the gentleman under the impression there is presently no Federal law with respect to the disposal of hazardous wastes?

Mr. STOCKMAN. No. That is not the point I am making.

Mr. ECKHARDT. It has been distributed illegally and we have to do something about cleaning it up and we have to do something about imposing the responsibility and the cost of cleaning up. We cannot impose those costs on the taxpayers through money generated at the Federal level and paid to the States without any requirements that the States recoup that money from those who caused the harm. That is what I am complaining about, about the gentleman's substitute, and that is what I applaud in the bill that we have before us.

Mr. LaFalce. Mr. Chairman, will the gentleman yield?

Mr. Eckhardt. I will yield to the gentleman from New York.

Mr. LaFalce. I would like to add to the answer the gentleman gave to the gentleman from Michigan (Mr. Stockman), we have had RCRA on the books from 1976, and right now they theoretically have been dealing since the promulgation of the regulations, in any event, with current disposal practices, and yet we can still find and count hundreds and thousands of instances when the law has been flagrantly violated.

That is going to create dangerous situations that we are going to have to deal with in the future.

☐ 1710

The Chairman. The time of the gentleman has expired.

(At the request of Mr. LaFalce, and by unanimous consent, Mr. Eckhardt was allowed to proceed for 1 additional minute.)

Mr. LaFalce. If the gentleman will continue to yield, second, even when great good faith efforts are being made to comply with the law, at best it is uncertain just how safe those practices are.

Further, in the State of New York I can give personal witness to this: There are only two sites in the entire State of New York where you can presently dump hazardous wastes, sites both of which happen to be in one county in my congressional district. The people are justifiably up in arms over the relative safety conditions of those disposal practices.

Also we can say since those are the only two sites in New York State, there is a countless amount of illegal dumping taking place across New York State, and probably in every single State in the Nation, and it probably is going to continue in the future, regardless of legislation that exists and regardless of passage of the superfund. We are going to have to deal with that in the future, and this bill gives us the comprehensive framework to actually do that, to deal with it.

Mr. Gramm. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the gentleman from Michigan and I fought this issue all through the full committee, and I think it is clear his substitute is not going to pass, but I think we owe him a debt of gratitude for bringing this substitute up because I think it demonstrates clearly that there are big deficiencies in this bill. What is at issue in this debate is not whether there is a problem. Everybody knows there is a problem. Nobody denies that. What is at issue is not whether we have had 18 hearings or not. That is a matter of public record. We have had a lot of hearings. A lot of people have given a lot of speeches and have gotten a lot of press, becoming heroes in their districts, showing concern for people. That is not the issue. The issue is have we come up with an effective and equitable instrument to deal with this problem? I think the answer is no.

The gentleman from Michigan has done a very good job in showing how we really have not defined the problem. We have not yet set out what it is going to cost. We have not looked at any costs and benefits. We have written a blank check.

There is another issue. That is how are we going to pay for this cleanup [Sec. 211]? We have not chosen a mechanism of paying which has been dictated by one central issue, and that is we want to find an easy way to get it paid for, so we are going to impose an industry fee which is geared toward current production. There is only one problem with that, and that is that no one anywhere during these 18 hearings has ever demonstrated any substantial correlation between past pollution which has occurred by industry and firms as related to current production as occurring by industries and firms.

I said in committee when we debated this issue that imposing a user fee based on current production to pay for past pollution without regard to who polluted was like going into a neighborhood where there had been a riot and somebody burned down the post office and imposing a fee on everybody who lived in the neighborhood to pay for rebuilding the post office. But that is not accurate. That does not really apply to what we are doing here. What we are doing here is we are coming in 20 years after the post office has burned down, and we are imposing a fee on the people who live in this neighborhood today, so not only are we clearly imposing a fee on people who are not guilty, we may well not be imposing a fee which really reaches the guilty party.

In all of the debate which has occurred here and which occurred in the committee, we continually have references made to making industry pay. Is anybody here so naive as to believe that an industry fee which is imposed across the board is not going to be passed 100 percent on to the American consumer? Let us not fool ourselves. This is a tax, not a fee, and the same person is going to pay this tax who pays every tax, and that person is the American consumer.

There is a second issue, and that is that by making pollution no-fault, by making it an industrywide problem to the extent that that moves us away from our effort to seek out the guilty party, then we let the guilty party off the hook.

I believe we need an effective bill to trace the assets of those who have polluted and to trace those assets to the grave, if necessary, to recover the funds. We have had references made by those who support this bill, who basically say, well, the industry has polluted; the industry has benefited by past pollution. But I ask who benefited from Hooker Chemical's pollution? Did the industry benefit? No. Hooker Chemical benefited. In fact, to the extent that Hooker Chemical polluted and its competitors tried to be responsible, its competitors tried to be good citizens, they lost. They did not gain; they lost by losing a competitive edge.

So I think it is important that we try to move toward a vehicle which imposes a cost on those who pollute, which provides funds whereby the States can seek out the guilty parties and make them pay, because if Hooker Chemical pays and not the whole industry, then Hooker Chemical cannot pass the cost to the consumer where an industry fee will surely see that cost passed.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. GRAMM. I yield to the gentleman from Michigan.

Mr. STOCKMAN. I thank the gentleman for yielding. Like I say, I appreciate the gentleman's comments. I think he has hit the nail right on the head. We are not arguing about the existence of the problem.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STOCKMAN. I ask unanimous consent that the gentleman may have 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

Mr. MADIGAN. Reserving the right to object, Mr. Chairman, under that reservation I would simply point out that we have spent almost an hour on this first amendment. I understand there are many amendments to be considered, and it is now a quarter after 5. Absent some understanding within the next few minutes about when this debate on this amendment is going to conclude, I would think that we would have to consider some sort of time limitation in the interest of the House's being able to move ahead and work its will. I will not object, but I would want to make that point.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. If the gentleman will continue to yield, Mr. Chairman, I was just suggesting the gentleman has hit the nail on the head. We have heard a number of statements this afternoon dictating you need a fee. You need some kind of club or sanction so that companies in the future will not continue to pollute or to dump waste in an improper manner **[Sec. 211]**.

That is not the issue here, because every one of those companies operating today is regulated by RCRA. The costs are being borne by those companies, and it is an irrelevant issue to raise. We are talking about the financial resources needed to take care of the problems in the past where some companies did a poor job or where local jurisdictions had weak laws.

To say that that burden—it is a burden—of spending money to protect the public health because we all made mistakes in the past ought to be imposed only on current generators of waste who might not even have been in business or existence at that time seems to me to be an arbitrary and total misuse of the user-fee concept that is applied here.

Mr. GRAMM. Mr. Chairman, reclaiming my time, and given the suggestion of an objection, after not having objected to numerous requests earlier, I would just like to say two things: One, we have heard references to the assertion that the gentleman's amendment guts the bill. I think it does not gut the bill. I think rather than taking out guts, it injects brains into the bill.

Second, it is important to note that with the new restrictions which are needed, and which I support, the consumer of petrochemicals, the consumer of mineral products, is going to pay a lot more money to meet the new standards. By imposing these fees, he is going to pay twice.

I think it is interesting when we talk about making the companies pay, do not let the company off the hook—and you can be good bait for that kind of rhetoric—I think it is important that we look back and see who is working in these industries who use the primary chemical products; who will lose the jobs as a result of this tax? Who is buying the output of these industries?

I assert if we look at who is paying and who will suffer the unemployment, we will find it is exactly the people we always hear spoken on behalf of here on the House floor—working Americans, poor people who are going to pay. Rather than dealing with this in an above-board straightforward but politically unpopular method, and that is by using general revenue funds to deal with the problem, rather than imposing a fee which in no way is related to who is guilty, I think that violates all our legal precepts, and it is an idea that I abhor.

Mr. **Gore**. Mr. Chairman, will the gentleman yield?

Mr. **Gramm**. I yield to the gentleman from Tennessee.

Mr. **Gore**. I thank the gentleman for yielding. Let me just say briefly, of course, under this bill when you hold that party responsible, we hold that party responsible. We do not go and raid the fund anytime where you know the party who is responsible. So that is, I say with all due respect, a misconception about the scheme.

□ 1720

Mr. **Martin**. Mr. Chairman, I move to strike the requisite number of words.

(Mr. Martin asked and was given permission to revise and extend his remarks.)

Mr. **Martin**. I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980, for reasons which I stated earlier in general debate. This bill, taken together with H.R. 85 enacted last Friday will enable the Government to respond to oil, hazardous substances, and hazardous wastes that are released into the environment. This Government response would occur only where the responsible parties cannot be identified, or cannot or will not take the appropriate cleanup action themselves. Both bills establish a system of taxes on industry which will assure an adequate and equitable "up-front" cleanup fund to enable these urgently needed actions to take place. The problems of environmental emergencies are pervasive. My own State and every Member's State has a potential for damages associated with the release of these pollutants. Clearly, action must be taken now.

I also oppose the substitute amendment of the gentleman for Michigan, although he has raised some questions that are troubling. But this is not an intrastate problem. Existing governmental authorities and funding are not adequate to deal with this problem. Nor are the States capable of dealing with what is clearly a problem of interstate magnitude. Let me address in particular the problems that H.R. 7020, the Hazardous Waste Containment Act of 1980, is to remedy. The magnitude of this problem is reflected in the fact that the Environmental Protection Agency has over 7,000 sites now under investigation across the Nation where hazardous waste sites have been identified and which may cause a significant environmental problem. The contamination from these sites clearly is an interstate problem. Numerous instances exist where two or more States have been affected by surface or ground water contamination and air pollution as a result of hazardous waste incidents. Since so many aquifers cross State lines, the likelihood of discovering more is fairly high. And there are other cases of interstate transportation of hazardous waste-causing problems.

Finally, absentee owners, who may have no reachable assets anymore exacerbate the problems of site cleanup. For example, 131,000 gallons of waste oil containing PCB's were illegally discharged along 210 miles of North Carolina roadside. It was later determined that the wastes originated at the Transformer Sales Co. in Allegheny, N.Y. It was apparently supposed to go to Pennsylvania to another site already in violation.

Another example of surface water contamination occurred in Saltville, Va. Disposal of industrial waste in the North Fork of the Holston River contaminated the river as well as the Cherokee Reservation in Tennessee. The Tennessee Health Department has banned fishing since 1970.

Over a year ago an oil slick was reported in the Susquehanna River outside Pittston, Pa. Subsequent examination discovered not only the presence of oil, but also other organic chemicals. The source was an abandoned mineshaft where hazardous wastes were being dumped into its ventilation pipes several miles away at a truckstop, ultimately making their way into the river. In mid-1979, 500 to 1,000 gallons per day of these substances poured out of the shaft and are, to this day, still continuing at a comparable or greater rate of flow; in addition, sodium cyanide dumped into the mines reacted with waste acids to form deadly hydrogen cyanide. The Susquehanna River is a major recreational resource and downstream drinking water supply.

As an example of absentee ownership of sites, three sites near Verona, Mo., have been identified as possibly containing dioxin wastes. The dioxin was produced between 1969 and 1972 by one company which had rental equipment and space from another business which is headquartered in Connecticut. Now that the Missouri manufacturer has declared bankruptcy, the State may not have anyone to hold liable. These are the kinds of examples of interstate pollution effects for which a responsible party cannot or will not take action. Only the Federal Government has the sufficient legal authority to deal with this. H.R. 7020 will accomplish that objective.

It must be noted that these examples cite practices which are already violations of existing laws. That does not, however, mean that any party can be held liable for cleaning up the potential hazard to innocent neighbors **[Sec. 107]**.

It has been suggested that this problem can be dealt with adequately by giving it to the States. Aside from the fact that the States themselves are supporting this urgently needed legislation because they recognize that they have neither the capacity nor the expertise to do it, there are several other reasons why the States cannot go it alone. I have already discussed the interstate nature of the problem. We do not have the luxury to try to establish 50 separate State hazardous waste programs, nor do we have the resources to try and make this into an entitlement program where each State is asking, "What's our share?"

Our objective is to deal on a prompt and effective basis with an environmental emergency. We want the funds to go where the technical problem exists, not where a political tradeoff formula dictates. Those scarce State resources of both money and manpower should be devoted to assuming the hazardous waste management program under the Resource Conservation and Recovery Act, which will insure that these hazardous waste disposal problems are not duplicated in the future.

Mr. Chairman, for these reasons and many others, I rise in strong support for H.R. 7020, the Hazardous Waste Containment Act of 1980, and oppose the Stockman substitute. **[Secs. 104 and 106]**

Mr. Chairman, I do want to raise some questions with the subcommittee chairman regarding regulatory uncertainty. There is some implication here in the debate that we are contemplating digging up some 7,000, 35,000 or 15,000 sites, depending on whose scare story you prefer, all across this country with no clear idea of what we are going to do with all of that stuff once we dig it up. There has been one suggestion that we particularly have to deal with those 35 percent or so of the sites that are not lined, and there is again the same question that we are going to dig up all of the unlined sites that can be found, amounting to some 2,500 or more dumpsites.

My question, Mr. Chairman, is what is the scope of this legislation? What characteristic does the committee have in mind or do the committee members have in mind that will determine which dumps are going to get dug up in order that we might develop some legislative history in this direction?

Mr. FLORIO. If the gentleman will yield, I will be happy to respond to the gentleman's question.

There is a two-tier response that has to be made. One of course is an emergency situation where the EPA will have the authority to go to the site and direct those at the site to make the appropriate modifications, enter into agreements with the States, and they are directed to do so in those situations where there is a life-threatening situation.

Incidentally, as a parenthetical comment, this whole standard was applied from the Clean Water Act, section 311. The gentleman may be familiar with that. There has been no example. We specifically asked industry representatives if there had been any abuse of authority by EPA under that statute. We received direct response, no there had been no such abuse of authority.

The other area the gentleman addresses is that of remedial action. As the gentleman knows, in the bill there is an inventory system set on a State-by-State basis. After those inventories on a State-by-State basis are accumulated as to the abandoned hazardous waste site, the top 100 hazardous waste sites in the Nation are singled out and those are the sites that will be dealt with in terms of remedial action **[Sec. 105(8)]**.

No, we are not turning EPA people loose to go dig up everything around the country. We are providing a structure whereby the 100 worst sites in the Nation will be dealt with in a remedial way.

Mr. MARTIN. Could I question the chairman further on that point? After we have cleaned up the 100 worst sites, has the committee examined the question of what we then do about the next 100 worst sites and the next 100 and the 100 after that? Do we leave then an irresistable temptation to have to proceed 100 at a time in pork barrel fashion until all 35,000 have been cleaned up? Did the committee look at some standards of what would pose an unacceptable risk, thereby justifying cleaning up these sites and not other sites?

Mr. FLORIO. If the gentleman will yield, the expectation is that we would proceed down the list of the priority items. This is a finite problem. We are not talking about prospective sites, we are talking about sites that are in existence now. Our bill is a 4-year bill with limited funds. We hope that at the end of this 4 years the moneys and the problem will be dissipated. That is there will be no more problems created, if the Resource Conservation and Recovery Act regulations go forward in the way we hope they will. There will be no new Love Canals. So that there is light at the end of the tunnel and what we are trying to do is deal with those problems that currently are imminent hazards to the people's safety and to the environment in the surrounding area.

Mr. MARTIN. Mr. Chairman, I thank the chairman for that explanation.

Really what worries me is sort of a terrifying scenario. Where will we be if, after cleaning up to the 100 worst sites and perhaps the next 100 after that, we end up having scared hell out of the other 34,800 or 34,900 communities where, inevitably some detectable traces of undesirable chemicals will be found.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Dannemeyer) to the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. Stockman).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. Stockman).

The amendment in the nature of a substitute was rejected.

PARLIAMENTARY INQUIRY

Mr. FLORIO. Mr. Chairman, might I inquire of the Chair what is our position with regard to the reading of the bill?

The CHAIRMAN. The Chair would advise the gentleman that we are still on section 1?

Are there further amendments to section 1?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. DANNEMEYER in the nature of a substitute: Strike out all after the enacting clause and substitute:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 3. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—Inactive Hazardous Waste Sites

"Subpart A—General provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of applicable law.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment;

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) State Inventory Programs.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the State in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) Environmental Protection Agency Program.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, required any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—National Hazardous Waste Response Plan

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3041. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carrried out;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into with the United States under any authority of law for purposes of such remedial action shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated for preparation and publication of the plan under this section, not more than $3,000,000, to remain available until expended.

"Subpart D—Enforcement

"ENFORCEMENT

"SEC. 3051. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, and other appropriate factors.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to asses such penalty.

"(b) CRIMINAL PENALTY.—Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part"; section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—National Hazardous Waste Response Plan

"Sec. 3041. National Hazardous Waste Reponse Plan.

"Subpart D—Prohibitions and Enforcement

"Sec. 3051. Enforcement.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 4. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entitles, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than eighteen months after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $2,000,000 to carry out the study required under this section.

Mr. DANNEMEYER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANNEMEYER. Mr. Chairman, contrary to what some may believe, the purpose of this substitute is not to forestall the cleanup of abandoned hazardous waste sites. In fact, just the opposite is true. The purpose of this amendment is to permit the information necessary for the implementation of a responsible, cost-effective hazardous waste cleanup program to be gathered before, rather than after the fact, especially that information pertaining to the possibility of private enterprise undertaking the task at no cost to the Government.

Ever so briefly, Mr. Chairman, this substitute would provide for the completion of the four studies—the site inventory, the funding study, the siting study, and the national response plan—called for in the Commerce Committee version of H.R. 7020 within 18 months instead of 24. And it would authorize $40 million to complete the studies instead of $600 million for the superfund itself. Once the studies were completed, then it would be up to the Congress to decide if EPA, private enterprise or the States should do the job, and how much should be spent on it [Sec. 301].

In addition to not putting the cart before the horse, there are several compelling reasons why this approach makes more sense and is likely to produce both better and quicker results. The first is, we do not even know how many sites there are, much less how best to clean them up. The second flows from the first; we are just guessing—as the competing versions of this bill illustrate—on the amount of money that will be needed. And the third—which to my way of thinking is the most important—is we are by no means sure that EPA is the best Agency to play the lead role in hazardous waste cleanup. Not only does EPA's past record contradict the premise that it will be able to act swiftly, efficiently and in consonance with local interests, but, like most other Federal agencies, it seems to manage problems rather than eliminate them.

Beyond that, there is evidence, taken from testimony received by the House Commerce Committee's Oversight Subcommittee and from the recent experience of the folks down around Houston, Tex., to the effect that private enterprise is willing to undertake the task of building and operating hazardous waste facilities on a "no cost to the Government" basis. What makes this latter evidence particularly striking is that the Gulf Coast Authority (GCA), which is responsible for hazardous waste disposal in a three county area down there, contacted 28 firms around the world to see if they would be interested in bidding on a construction and operation of a comprehensive hazardous waste disposal facility including three high temperature incinerators and no less than 22 of the firms submitted bids. Eleven of these bids met all criteria, and eventually, two firms were selected to build the organic and inorganic waste disposal facilities. Under terms of the contract, these firms will finance the construction and operation of the facility and will pay the "percentage of revenue" fee to the GCA which, in turn, will make available the land. No taxpayer funds are involved so far.

Of course it is possible, in this instance, that tax moneys may have to be used to pay the cost of shipping abandoned waste to the facility but there is nothing to prevent other communities, who might choose to follow Houston's example, from requiring their successful bidder to ship those wastes as part of the contractual arrangement. And judging from the number of bidders in the Houston case there is every reason to believe that firms would be willing to do business on that basis.

As a footnote, I might also mention that the firm that will build the incinerators down around Houston is already building a similar facility which it will own outright, south of Baton Rouge, La. And it is considering a third facility in California, all of which suggests that Congress would be wise to determine how many other firms might be willing to dispose of both current and abandoned wastes on a profitmaking basis if given the opportunity. The savings, both in terms of the time and money, could be considerable.

Of course, there are those who will say this is all Pollyanna and, in the real world, what we need is not more studies but cleanup moneys now. I can understand, even sympathize with, those sentiments, but as mentioned earlier, giving EPA money and authority is not synonymous with getting quick results. Moreover, the agency tends to run rough-shod over State and local interests, as it is demonstrating in the auto emission inspection and maintenance controversy, and the last thing that we need with respect to hazardous waste cleanup is for that to happen.

Furthermore, I am reminded that EPA has been concerned about PCB's for years, yet it is two private firms that seem to have come up with a solution to that problem—converting them to common table salt. So, if it is action and ingenuity we are looking for, there are better places to look than EPA for it.

Mr. Chairman, in the hope that the Members of this body will look both ways before crossing the superfund track, I urge adoption of this substitute.

☐ 1730

Mr. Florio. Mr. Chairman, I rise in opposition to the amendment. I think the points in opposition to the amendment can be made very succinctly.

There is nothing in this bill that utilizes public moneys for the establishment of a hazardous waste disposal industry, so the gentleman's apprehensions are really not founded on any kind of Federal funds or Federal basis. As a matter of fact, as I have indicated in prior statements, I am convinced that the private sector should and will develop this industry.

What the gentleman says about what he feels should be in the bill is in the bill; the inventory, the development of the plan; all of those things are in the bill. Unfortunately, the gentleman's substitute then goes on to cut out the heart of the bill, which is the emergency response authority which is needed **[Secs. 104 and 106]**, as well as the funding to contain and to clean up **[Sec. 211]**. So, I would have to strongly argue against the gentleman's amendment, although sympathetic to what I think is his main feeling, that the Federal Government should not get into the old business of developing an industry of hazardous waste disposal. I agree with that, but this substitute certainly is not responsive to that point.

I would ask for opposition to this proposal.

The Chairman. The question is on the amendment in the nature of a substitute offered by the gentleman from California (Mr. Dannemeyer).

The amendment in the nature of a substitute was rejected.

The Chairman. The Clerk will designate section 2.

Section 2 reads as follows:

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

Sec. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other pollution of navigable waters.

The Chairman. Are there amendments to section 2?

If not, the Clerk will designate section 3.

[See reported bill, pp. 139–140.]

AMENDMENTS OFFERED BY MR. FLORIO

Mr. Florio. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The **Chairman**. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Florio: Page 3, line 12, strike out "art of technology" and insert "art technology".

Page 4, line 24, strike out "(a) COVERAGE.—".

Page 4, line 25, strike out "shall apply to inactive hazardous waste sites." and insert "shall apply only to inactive hazardous waste sites, except as otherwise explicitly provided".

Page 5, strike out lines 8 and 9 and substitute "(A) where".

Page 7, beginning in line 3, strike out "inactive site" and insert in lieu thereof "inactive hazardous waste site".

Page 7, in line 17, after "(2)" and in line 23 after "subsection" insert "with respect to each such site".

Page 9, line 5, strike out "(2)" and substitute "(1) and (2)".

Page 9, line 10, strike out "of the Solid Waste Disposal Act".

Page 9, line 16, strike out "(1)" and insert in lieu thereof "(2)".

Page 9, line 18, strike out "(1)" and substitute "(2) to the extent that such information is known to or reasonably determinable by such person".

Page 17, line 3, strike out "the" and insert "a".

Page 18, line 18, strike out "the" and insert "a".

Page 19, line 13, after "may" insert ", notwithstanding section 3021,".

Page 2, strike out lines 6 through 9.

Page 22, line 24, after "risk" insert "of harm".

Page 23, line 4, after "action" insert ", or if the Administrator determines that such party will voluntarily take action,".

Page 24, beginning in line 14, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 24, line 18, after "may" insert ", notwithstanding section 3021,".

Page 24, line 24, strike out "the" and insert "a".

Page 25, beginning in line 3, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant".

Page 25, beginning in line 11, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant".

Page 26, beginning in line 21, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 10, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 22, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 18, after "risk" insert "of harm".

Page 27, line 23, after "action" insert "or if the Administrator determines that such party will voluntarily take action".

Page 28, line 20, after "environment", strike the period, insert "; or", and add the following new subparagraph:

"(C) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk."

Page 39, line 2, strike out "(3)(E)" and insert "(2)(E)".

Page 44, line 17, strike the period at the end of the sentence and add the following: ", and prior to October 1, 1984."

Page 44, line 21, strike the words "representative of affected industries," and insert in lieu thereof the following: "representatives of affected industries, and after providing adequate notice and opportunity for public comment,".

Page 46, beginning in line 6, strike out "such release" and insert "a release or threatened release".

Page 46, line 14, after "release" insert "or threatened release".

Page 47, line 3, strike the words "violates section 3035" and insert in lieu thereof the words "willfully violates section 3033".

Page 47, line 24, strike out "inactive site" and insert "inactive hazardous waste site".

Page 49, line 17, strike out "(1)".

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey.

There was no objection.

Mr. FLORIO. Mr. Chairman, these amendments are exclusively technical amendments, making clerical changes and technical changes. I would ask for support for these amendments.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding. We have had an opportunity to review the amendments of the gentleman from New Jersey on this side, and recognize that they are only technical, and do urge the committee to support the amendments.

Mr. FLORIO. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey (Mr. Florio).

The amendments were agreed to.

The CHAIRMAN. Are there other amendments to section 3?

If not, the Clerk will designate section 4.

Section 4 reads as follows:

[See reported bill, pp. 140–141.]

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

(Mrs. Schroeder asked and was given permission to revise and extend her remarks.)

☐ 1740

Mrs. SCHROEDER. Mr. Chairman, I would like to join with many of my colleagues to express great appreciation to the subcommittee and the full Committee on Interstate and Foreign Commerce for all the time and effort they have put in on this incredible subject which is so important and so national in scope.

I have testified before the committee, and I know that many of the people have brought their problems to the committee on this very difficult issue. One of these things I want to thank the committee for is that it very carefully, in the report of the Committee on Interstate and Foreign Commerce, submitted some of our problems in Denver, Colo.

We have a problem where radium tailings were dumped, and we have talked about that today. We have a chemical dump problem, and we also have a radium tailings problem. We have found these radium tailings under pancake houses, in empty lots where children were playing, by factories, and in all sorts of areas. There are over 30-some areas that have these tailings, and they are very dangerous also because of the low level of radiation in that area where the chemical sites are located.

So I want to thank the gentleman for outlining all these matters in the committee report and for listening to many of us who have been there and then coming up with a solution. To put all of these things together is very hard, and sometimes we get to one step and then another but do not get it done all the way.

Mr. Chairman, I would like to engage the gentleman from New Jersey (Mr. Florio) in colloquy, because I want to make it clear in the legislative language that when we are talking in the bill about hazardous waste sites and the program for appropriate environmental response, we are also including such things as the radium tailing sites we have seen listed in the report [Sec. 101(14)].

Mr. FLORIO. Mr. Chairman, if the gentlewoman will yield, I will be happy to respond to her question. Of course, the answer is that if the materials the gentlewoman is concerned about, any one of the materials, are covered under the Resource Conservation and Recovery Act, they would, of course, be covered and eligible for funding.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for his response, because we wanted to make sure those were included. They are included in the report, and I wanted to make sure that is a comprehensive, broad definition rather than a narrow one.

Mrs. FENWICK. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank my colleague for yielding, because I, too, have a question.

In my district, the Federal Government in the past stored radioactive material that is now under the Catholic rectory nearby. Actually the rectory is practically on top of the site that used to be covered with this radioactive material, and it has a very high radioactive reading.

I would like to ask, will this be covered, too, in the bill?

Mr. FLORIO. Mr. Chairman, if the gentlewoman from Colorado will yield, I will respond in the same way that I responded to the gentlewoman from Colorado.

If in fact it is covered as a hazardous waste—and I suspect it is—under the Resource Conservation and Recovery Act, it would be eligible for funding for remedial action under this bill.

Mrs. FENWICK. Whether it is the Federal Government or private, it would be the same? [Sec. 107(g)].

Mr. FLORIO. I am sorry, but I did not hear the gentlewoman.

Mrs. FENWICK. We are dealing with waste that was left by the Federal Government. That would still be covered?

Mr. FLORIO. Yes. Mr. Chairman, if the gentlewoman from Colorado will yield further, if in fact we are talking about the Federal Government's authority on Federal Government property, the appropriate agency is required to respond.

Mrs. FENWICK. Mr. Chairman, they apparently abandoned this site and turned the land over to the town, and the Catholic rectory and a playground were built over the site.

Mr. FLORIO. Then it would be covered under the act.

Mrs. FENWICK. Mr. Chairman, I thank the gentleman from New Jersey (Mr. Florio).

The CHAIRMAN. Are there further amendments? If not, the Clerk will designate the next section.

Section 5 reads as follows:

[See H.R. 7020, as reported, pp. 141–188.]

AMENDMENT OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the reading of the amendment be dispensed with, and that it be printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The amendment reads as follows:

> Amendment offered by Mr. Dingell: Page 5, after line 18, insert: "Where two or more noncontiguous areas meet the requirements of subparagraphs (A) and (B) and where they are reasonably related on the basis of geography or on the basis of the threat, or potential threat, to public health or the environment, the Administrator may treat such areas as a single inactive hazardous waste site for purposes of this Act.".

(Mr. Dingell asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment. First, let me state that the amendment is very simple. All it does is permit a number of sites, in the discretion of the administrator, to be treated as a single one for the purpose of cleanup.

I want to make the comment that I believe this is desirable by reason of the fact that a large number of these sites have been set up by the same person or groups of persons in a similar area, and the cleanup of one will lead to benefit of the area in which the problem exists.

Mr. Chairman, I would like to pay tribute to the distinguished and able chairman of the subcommittee, the members of the subcommittee, and the distinguished and able senior minority member of the subcommittee for the outstanding way in which they have processed this legislation and for the remarkable lack of controversy which they have brought to the floor.

I might observe that not too long back, when I was on the other side of a piece of legislation from my good friends whom I have just mentioned, the gentleman from New Jersey (Mr. Florio) and the gentleman from Illinois (Mr. Madigan), along with my good friend, the gentleman from Texas, I took quite a drubbing at their hands. So I have observed their ability on two occasions, and I commend them not only for the remarkable way in which they have handled this matter but for the superb job they have done in crafting a very fine and technically well done piece of legislation, one which is very important insofar as the great concerns the Nation has in this matter relate to the legislation.

I rise to offer a perfecting amendment to the bill, a bill which in every other way represents a sound and exemplary work of environmental health legislation **[Sec. 104(d)(4)]**.

The amendment, which is of a technical nature, makes explicit the scope of the Administrator's discretion when designating sites pursuant to the site definition provisions of the act. My amendment is offered in recognition of the frequent lack of correlation between a given hazardous waste threat and a single hazardous waste site. This clarification is particularly important when viewed in light of the priority site provisions of the act. The amendment is consistent with and reinforces the intent of the act, which is to expeditiously abate this Nation's most serious hazardous waste problems, regardless of their exact relationship to the number of sites involved.

I also would like to take this opportunity to express to this body my full support for this essential legislation. We can afford to delay no longer the initiation of comprehensive and concerted action to abate and prevent human and environmental exposures to hazardous wastes from abandoned and inactive sites. I credit you, Mr. Chairman, and the distinguished ranking minority member of the Transportation and Commerce Subcommittee, Mr. Madigan, for your tenacity and patience, and for maintaining both substance and balance in this urgent and controversial measure.

Indeed, we are dealing with one of the most pressing public health threats of today and the coming decade. This Nation is only beginning to inherit the legacy of past inadequacies and indiscretions. While attention has focused on Love Canal, the Valley of the Drums and others, these are but the headliners in a cast of thousands.

The adverse health and environmental impacts associated with individual hazardous waste sites are reprehensible and must be redressed. But, perhaps the most pervasive and enduring threat posed by hazardous waste releases is witnessed in our groundwater, a precious nonrenewable resource. Fifty percent of the U.S. population relies on groundwater for its drinking water supply. Furthermore, one-fifth of the population relies on groundwater from individual wells without the benefit of treatment. Yet, in one of the only States to have thoroughly surveyed the problem of groundwater contaminated by inplace toxics, the State of Michigan has identified over 500 known and suspected sites. As other States follow suit, the scope of groundwater contamination will undoubtedly intensify.

The severity of the hazardous waste problem is magnified even further when one examines the inadequacy of existing authority to deal with the release of hazardous wastes from inactive and abandoned sites. Under present authority, before action can be taken to abate releases of hazardous wastes from such sites a problem must already exist, a financially responsible owner must be identified, and abatement efforts can only begin after successful judicial action has occurred. Thus, the unfortunate victims of hazardous waste releases are further victimized by protracted litigation.

The bill before us remedies these weaknesses in existing law, by providing the authority, funding and incentives to initiate and maintain the cleanup of this Nation's hazardous waste morass. At this time, there is no more important or necessary step that can be taken to affirm our resolve to abate and prevent hazardous waste exposures.

Nonetheless, it would be foolhardy to maintain that all of our hazardous waste ills will be solved with this one piece of legislation given the scope of the problem facing the Nation. The magnitude of the problems of hazardous waste siting, groundwater contamination and postclosure liability will require the resources and resolve of generations to come.

The task is large and the stakes are high, and we must commence with this first and most important step. We have no more time to delay. I urge all of my colleagues to support the passage of this bill.

Mr. **Florio**. Mr. Chairman, will the gentleman yield?

Mr. **Dingell**. I yield to the gentleman from New Jersey.

Mr. **Florio**. Mr. Chairman, I thank the gentleman for yielding, and I will say that his proposal is very desirable.

Since he has brought this to our attention, we have found that there are other areas that we think there are other areas that we think will benefit from the proposal. It is discretionary, and accordingly I am prepared to accept the amendment.

Mr. **Madigan**. Mr. Chairman, will the gentleman yield?

Mr. **Dingell**. I yield to the gentleman from Illinois.

Mr. **Madigan**. Mr. Chairman, I want to thank the gentleman for yielding, and I also thank him for his courtesy in providing the minority an opportunity to have an advance look at the amendment. We have reviewed it and do intend to support it. We urge the Committee to do the same.

Mr. **Downey**. Mr. Chairman, I rise in opposition to the amendment, but primarily I rise to address a question to the subcommittee chairman.

My understanding of the Dingell amendment is that it just provides for discretion **[Sec. 104(d)(4)]**?

Mr. **Florio**. Mr. Chairman, if the gentleman will yield, that is correct, on the part of the Administrator to treat two or more noncontiguous areas where they are reasonably related on the basis of a threat to the public health. That is what this is designed to cover.

If there are a number of individual sites in direct proximity—and they may even exist over State lines—then they could in the discretion of the Administrator be treated as a single source.

Mr. **Downey**. Mr. Chairman, my question concerns Long Island, which has 2.8 million people who all occupy one aquifer, and I am concerned that the EPA Administrator not decide that he will designate all of Long Island as one dump site. This just allows him the discretion to determine. I never thought of Long Island as a "dump site," and I hope that EPA does not think of it as such.

Mr. Chairman, I am concerned that we not handle what I consider to be district problems in all of Long Island in the same way under this same umbrella.

Mr. **Florio**. Mr. Chairman, the gentleman is correct. This is simply discretionary.

Mr. **Downey**. Then Mr. Chairman, I would not object or oppose the amendment.

The **Chairman**. The question is on the amendment offered by the gentleman from Michigan (Mr. Dingell).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CLEVELAND

Mr. **Cleveland**. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cleveland: Page14 line 24 after the period, insert: "To the extent practicable, the Administrator shall include in such list of the 100 top priority sites at least one site in each State. The site so included shall be the inactive hazardous waste site designated by the State under subsection (a) as having the greatest danger to public health and the environment of all the sites in that State which are included in the inventory carried out under section 3031.".

(Mr. Cleveland asked and was given permission to revise and extend his remarks.)

Mr. CLEVELAND. Mr. Chairman, I would just like to say that this amendment springs from experiences in my Committee on Public Works and Transportation. When we have programs such as this, we always tried to have each State qualify for at least a part of the program [Sec. 105(8)].

It was called to my attention, however, by the distinguished gentleman from New Jersey (Mr. Florio) and my friend and colleague, the gentleman from Illinois (Mr. Madigan), that there might be some States that would not need help or benefit under the provisions of this act, so that is why we have added the language, "to the extent practicable."

I do know that in my own small State of New Hampshire we have specific problems, and they are not large enough or important enough perhaps to make that magic list. But I think we ought to have at least some of them taken care of. In that connection the amendment offered by the gentleman from Michigan (Mr. Dingell) is perhaps helpful to a State like New Hampshire, because it is becoming a dumping ground for some types of waste that we do not even produce. Rather it is because we are close enough to some of the places that do.

Mr. Chairman, section 3032 of H.R. 7020, the Hazardous Waste Containment Act, requires the States to conduct an inventory of inactive hazardous waste sites within 15 months of the date of enactment. These priority lists may then be used by the Administrator to compile the top priority sites for the Nation. The sum of $35 million is to be made available to the States to carry out this program. I would like to assume that the administration will use the State list development under H.R. 7020's mandate.

There is no requirement, however, that he do so. This creates an opportunity for political mischief, by any administration, allowing them potentially to favor those States which have supported their program or which have supported the administration politically. I do not intend to address this problem today, however, but I think my colleagues should be on notice that this situation potentially exists with the language of H.R. 7020, as currently before the House, and I hope my colleagues will correct this problem in conference.

Now, Mr. Chairman, as we are all aware, any action by a State to list and categorize sites which may pose a threat to public health, safety and welfare, is likely to raise some public concerns. Yet one of the deficiencies of H.R. 7020, in my opinion, is that it does not provide any assurance that a State will receive Federal assistance once this problem has been identified. On the one hand, we are telling people there is a problem and we are ranking that problem in terms of predetermined national criteria. Yet, on the other hand, we make no promise as to whether or not the problem will be addressed under H.R. 7020.

Additionally, Mr. Chairman, whenever a site might discharge a hazardous substance into the navigable waters, State response programs, financed by taxes or fees, would be preempted by H.R. 85, as passed by the House last Friday—if those efforts are to fund removal costs or compensation of certain economic damages. Therefore, Mr. Chairman, it is my opinion that we must provide a minimum level of assistance to the States to respond to those sites identified by a State as posing a threat to human health and welfare.

This is especially important to rural States which have become a dumping ground for the so-called midnight dumpers of hazardous substances. These States are unlikely to compete in a national program for assistance. This is because of the nature of clandestine dumping operations. A State like mine, which does not generate a large volume of toxic waste, has been victimized as a dumping ground for waste from other States. This means that we can receive a huge volume of waste which are dispersed widely in the unpopulated areas of the State but not in sufficient concentrations or volumes for any one site to qualify on anybody's national list of 100. Yet a severe problem exists.

Therefore, I am offering an amendment to require the Administrator of EPA to designate, at a minimum, one site per State for assistance under H.R. 7020. That site must be selected from the State priority list and must be designated by the State as the site they want to be assisted under the Federal program. Mr. Chairman, this approach is consistent with other legislative initiatives, specifically the Clean Water Act which strives to achieve some sort of equity in the disposition of Federal assistance to achieve clean water. This amendment will assure that we have a truly national program and that a minimum level of assistance is available to address the concerns of our citizens which will surely result from the identification of these sites in each State. I urge my colleagues to support this amendment.

Mr. Chairman, the distinguished managers of the bill have agreed to graciously accept this amendment with one change, which I have made to the original amendment I intended to offer. I added the phrase "to the extent practicable" at the beginning of the amendment. This was done because Mr. Florio indicated that he was concerned that some States have no sites needing Federal assistance and that my amendment would tie EPA's hands and unduly restrict the program. This is not my intent and therefore I accepted this improvement—with this understanding—when a State identifies a priority problem it will receive at least one designation on the national priority list.

Mr. **Madigan**. Mr. Chairman, will the gentleman yield?

Mr. **Cleveland**. I yield to the gentleman from Illinois.

Mr. **Madigan**. Mr. Chairman, I want to thank the gentleman for yielding and also for his coming to us in advance with this amendment.

As the gentleman from New Hampshire has mentioned, the gentleman from New Jersey (Mr. Florio) and I have had an opportunity to discuss the amendment with him, and we do intend to support it.

Mr. **Florio**. Mr. Chairman, will the gentleman yield.

Mr. **Cleveland**. I yield to the gentleman from New Jersey.

Mr. **Florio**. Mr. Chairman, I would like to publicly express my appreciation to the gentleman from New Hampshire (Mr. Cleveland) for his willingness to discuss this problem and accept some suggestions, and on the basis of those discussions and our understanding, I am pleased to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. Cleveland).

The amendment was agreed to.

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AMENDMENTS OFFERED BY MR. GORE

Mr. GORE. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The amendments are as follows:

Amendments offered by Mr. Gore: Page 47, line 17 after "party" insert: "other than (i) an employee or agent of the defendant, or (ii) a person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,".

Page 48, line 3, strike out "(2)" and substitute "(3)".

Page 48, after line 4 insert the following new paragraph:

"(2) For purposes of paragraph (1)(C) a defendant (including any person involved in the generation, transportation, treatment, storage, or disposal of hazardous waste) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of the third party and that he exercised due care in light of all relevant facts and circumstances."

Page 48, line 5, strike out "(2)" and substitute "(3)".

Page 48, line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the liability among the parties where deemed appropriate based upon evidence presented by the parties as to their contribution. In apportioning liability under this subparagraph, the court may consider among other factors, the following:

"(i) the ability of the parties to demonstrate that their contribution to a discharge, release, or disposal of a hazardous waste can be distinguished;

"(ii) the amount of hazardous waste involved;

"(iii) the degree of toxicity of the hazardous waste involved;

"(iv) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste;

"(v) the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous waste; and

"(vi) the degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment."

Page 48, line 21, strike "this paragraph" and insert "subparagraph (A)".

(Mr. Gore asked and was given permission to revise and extend his remarks.)

Mr. GORE. Mr. Chairman, these two amendments are to the liability section of the bill. They are supported by all of the parties who have looked at and are concerned with this legislation **[Sec. 107(b)]**.

Mr. Chairman, today we are considering one of the most important pieces of legislation introduced in this Congress—H.R. 7020, the "superfund" bill to clean up abandoned and inactive hazardous waste sites. Over the last 3 years, I have participated in or chaired over 18 hearings on the enormous problems associated with hazardous waste disposal, and I believe that this legislation is an effective and desirable response to those problems. It is well thought out and effectively targets the problems it is intended to address. It is a good bill and one that is sorely needed. I urge my colleagues to support it.

While I enthusiastically support this legislation, I do believe that it requires improvement. I believe the bill is particularly deficient with regard to its liability provisions. Consequently, I am today offering two amendments to H.R. 7020 that I believe will strengthen those provisions and insure that those companies and individuals who are responsible for our hazardous waste problems will bear their share of the clean-up cost burden.

The first amendment I offer is to the so-called third party defense created in section 3071(a)(1)(C) of H.R. 7020. The second amendment is to the joint and several liability provisions set forth in section 3071(a)(1). With your indulgence, Mr. Chairman, I would like to discuss my amendments. Although many of my comments have appeared previously in the Record, I believe that they are sufficiently important to warrant reemphasis here today. I hope my colleagues will agree with my position. I urge them all to support my amendments.

I will first discuss my amendment to the third party defense of H.R. 7020.

THIRD-PARTY DEFENSE UNDER H.R. 7020

As presently drafted, section 3071(a)(1)(C) of H.R. 7020 provides that a defendant can escape liability for a release, or threatened release of hazardous waste if he/she can demonstrate that such was "caused solely by * * * an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste." This language alters the existing common law rules of first, strict liability for abnormally dangerous/ultrahazardous activity and second and alternatively, liability for inherently dangerous activity that would otherwise be applicable to parties dealing with hazardous waste.

STRICT LIABILITY

A. Hazardous waste disposal is abnormally dangerous ultrahazardous activity

There can be little doubt that actions involving hazardous waste would be considered by the courts as abnormally dangerous or ultrahazardous activity sufficient to subject a responsible party to strict liability. While there may at present be no decision in which an individual has been held strictly liable to damages resulting from a release of hazardous waste, this is due to the "newness" of waste problems rather than a reticence on the part of the judiciary. The common law proceeds on the basis of analogy and by extrapolation of existing doctrine to new fact situations. Absence of case law on the specific issue of strict liability for hazardous waste in no way invalidates the conclusion of the doctrine's applicability.

Strict liability for abnormally dangerous/ultra- hazardous activity originated with the historic case of *Rylands* v. *Fletcher,* 159 Eng. Rep. 737 (1865), rev'd, L.R. 1 Ex. 265, aff'd, L.R. 3 H.L. 330 (1868). In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today numerous activities have been held to constitute abnormally dangerous/ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. Undoubtedly, as litigation involving hazardous waste develops, courts will add the generation and disposal of such wastes to the list of ultrahazardous activities.

Section 520 of the Restatement (Second) of Torts sets forth six factors to consider in the classification of an activity as abnormally dangerous (note: "Ultrahazardous" activity was the term used in the first Restatement; the phrase "abnormally dangerous" is used by the Restatement (Second)):

> (a) Existence of a high degree of risk of some harm to the person, land or chattels of others;
> (b) Likelihood that the harm that results from it will be great;
> (c) Inability to eliminate the risk by the exercise of reasonable care;
> (d) Extent to which the activity is not a matter of common usage;
> (e) Inappropriateness of the activity to the place where it is carried on; and
> (f) Extent to which its value to the community is outweighed by its dangerous attributes.

Not all these factors need be present before an activity can be said to be abnormally dangerous and strict liability imposed. Most, however, if not all of the factors are applicable to release of hazardous waste.

First, as has been demonstrated at Love Canal and elsewhere, release of hazardous waste obviously posed great harm and danger to a community. It does not matter that there may be only a slight possibility that a release might occur in a given area. As comment g to section 520 points out:

> If the potential harm is sufficiently great, . . . the likelihood that it will take place may be comparatively slight and yet the activity be regarded as abnormally dangerous.

Second, releases of waste can occur despite the exercise of reasonable care. Certainly, a great deal of risk can be eliminated by the exercise of due care; however, strict liability will still attach because of the inherent potential of hazardous waste to cause harm despite proper precautions. As comment h explains:

> There is probably no activity . . . from which all risks of harm could not be eliminated by the taking of all conceivable precautions, and the exercise of utmost care, particularly as to the place where it is carried on. . . . It is not necessary, for the factor stated in Clause (c) to apply, that the risk be one that no conceivable precautions or care could eliminate. What is referred to here is the unavoidable risk remaining in the activity, even though the actor has taken all reasonable precautions in advance and has exercised all reasonable care in his operation, so that he is not negligent.

Additionally, most activities that could result in a release of hazardous waste are not "customarily carried on by the great mass of mankind or by many people in the community" and so cannot be said to be a matter of common usage. Appropriateness of the activity to its surrounding and value to the community, moreover, will usually excuse only those activities that, while dangerous, can be carried on only in a particular area and/or support the economic well being of a community to an extraordinary degree. Given the above, it is inconceivable that actions involving hazardous waste would not be considered abnormally dangerous. Strict liability would thus be imposed upon anyone responsible for a release of such waste.

B. The impact of section 3071(a)(1)(c)

To understand the impact of the third-party defense provided by H.R. 7020, it is imporant to keep in mind the policy underlying the doctrine of strict liability. Certain activities carry with them the inherent possibility of harm to others and so, as outlined above, are deemed abnormally dangerous, or ultrahazardous, activities. Society makes a basic policy decision, however, that, despite the inherent danger, these activities are needed and so they are permitted to occur. Were it not for this value determination, the activities would be considered too dangerous to allow, and anyone engaged in any of the activities would be guilty of negligence. In other words, the activity is felt to be "of such utility that the risk which is involved in it cannot be regarded as so great or so unreasonable as to make it negligence merely to carry on the activity at all." Consequently, because of the social utility of their manufactured products, generators of hazardous wastes are not considered negligent simply because they are engaged in their business.

Having decided to permit the abnormally dangerous activity, however, society imposes certain obligations on those individuals engaged in such activities. Fundamentally, an abnormally dangerous activity must "pay for itself." The activity may be carried on, but if an innocent party is injured, he must be compensated regardless of whether the defendant was "at fault."

Thus, while the generation and disposal of hazardous waste are deemed a necessary evil in our society, "the unavoidable risk of harm that is inherent in (handling waste) requires that it be carried on at (the defendant's) peril, rather than at the expense of the innocent person who suffers harm as a result of it." The defendant, then, is basically an "insurer" against the consequences of his abnormally dangerous conduct. As Prosser stated:

> He is liable although he has taken every possible precaution to prevent the harm and is not at fault in any moral or social sense.

The effect of section 3071(a)(1)(C) is thus readily apparent. By enabling a defendant to escape liability by a showing of "due care," H.R. 7020 erects a negligence standard where one of strict liability would otherwise apply. As shown above, under the common law, negligence is irrelevant to a finding of liability for abnormally dangerous/ultrahazardous activity. H.R. 7020 changes this common law rule. Under section 3071(a)(1)(C), a defendant can avoid liability, despite being engaged in ultrahazardous activity, by contracting with a third party to dispose of the hazardous waste. As long as the defendant can sustain his/her burden of proof regarding the exercise of due care in selecting a transporter or disposer, the defendant cannot be held liable and no recovery can be had from him/her.

Although it couches its language in terms of new duties imposed on a defendant, the Commerce Committee report accompanying H.R. 7020 is quite candid in demonstrating that it imposes only a requirement of due care on defendants. Even though a defendant must show that he took a number of precautions and acted with due care in order to escape liability, the basic problem still remains. Under the common law, the defendant could not escape liability even if he did take every precaution. H.R. 7020, then, effectively destroys a rule that has been in effect for over 100 years.

In addition to interposing the negligence barrier between the plaintiff and defendant, the defense provided in section 3071(a)(1)(C) flies in the face of section 522 of the Restatement (Second) of Torts. That section provides:

> One carrying on an abnormally dangerous activity is subject to strict liability for the resulting harm although it is caused by the unexpectable
> (a) act, negligent or reckless conduct of a third person. . . .

As the comment to section 522 explains, the abnormally dangerous nature of an activity is the basis for the defendant's liability when the activity results in damage or injury. Just as the negligence of the defendant is irrelevant when the activity is considered abnormally dangerous, acts by a third party cannot affect liability under the common law. It is the activity itself, not an individual's conduct, that determines the liability.

INHERENTLY DANGEROUS ACTIVITY

Related to the doctrine of strict liability is the rule that holds a defendant liable for injuries resulting from inherently dangerous activity even though he/she contracted with a third party for the performance of that activity. This is basically a rule of vicarious liability, whereby the employer is held liable for the negligence of the independent contractor, regardless of whether the employer himself has been at fault. As with strict liability, policy reasons dictate that the employer not be permitted to shift responsibility to the contractor. The difference between the liability here and that for abnormally dangerous activity appears to be that the defendant here has himself actually been engaged in no activity; the contractor performs all the work. This rule seems more applicable to situations involving middlemen—if such are used—in hazardous waste disposal than to the generators of waste.

Under the rule here, it does not matter that the defendant exercised due care in his selection or instructions to the contractor. The inherently dangerous nature of the activity to be performed provides the grounds for liability. As section 416 of the Restatement (Second) of Torts provides:

> One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care

to take such precautions even though the employer has provided for such precautions in the contract or otherwise.

Under section 416 the employer remains liable for injuries resulting from dangers that he should contemplate at the time that he enters into the contract; he cannot shift to the contractor the responsibility for such dangers or for taking precautions against them. The employer will remain liable even if the contract contains express stipulations for the taking of adequate precautions and even if the contractor agrees to assume all liability for harm caused by his failure to take such precautions.

Clearly, by enabling a defendant to exonerate himself by demonstrating the care, H.R. 7020 abrogates this common law rule as well. Section 3071(a)(1)(C) enables—indeed encourages—a defendant to contract out disposal of hazardous wastes and thereby contract away liability. Because of the inherently dangerous nature of the work performed, the negligence of the contracting party is irrelevant to liability under the common law. H.R. 7020, however, alters the rule to provide a defense where, for sound policy reasons, one heretofore has not existed.

The amendment I offer represents a compromise between my original position and the wishes of Chairman Florio. I believe that this compromise accomplishes the necessary changes to make the responsible parties accountable and accommodates the concerns of the bill's sponsors. Indeed, my amendment strikes a middle ground between the common law rule and the process presently envisioned under H.R. 7020. My amendment moves H.R. 7020 closer to the common law in several ways. First, the amendment removes the ability of and incentive for a defendant to contract away liability.

The amendment would insure that the common law rules of both strict and vicarious liability remain intact in cases in which a defendant seeks to shift the responsibility for costs resulting from his ultrahazardous activity to others with whom he is involved in a business relationship. My amendment would restrict the application of the third party defense to situations where the third party is not an employee or agent of the defendant, or where the third party's act or omission does not occur in connection with a contractual relationship.

Second, the amendment would permit a defendant to escape liability for damages caused by the act or omission of a third party who has no connection whatsoever with the defendant and which act or omission is unforeseeable. Although this is still counter to the common law, it has a basis in reason. Finally, with regard to foreseeable acts by third parties, the amendment requires that a defendant demonstrate that he acted with due care in order to escape liability. This insures that the defendant will not escape liability if he acted negligently, even if the damage caused is the result of an act of an unrelated third party.

Mr. Chairman, as I stated at the outset, my second amendment focuses on the alleged joint and several liability provisions of the "superfund" bill. I would like now to discuss that amendment [Sec. 107].

JOINT AND SEVERAL LIABILITY UNDER H.R. 7020

Although section 3071(a)(1) of H.R. 7020 proclaims that the liability of any party found to have caused or contributed to a release of hazardous waste shall be "joint and several" with any other such person, exceptions created by the bill effectively render that term meaningless here. Joint and several liability ordinarily would mean that whenever a single, indivisible harm is sustained as a result of independent, separate, but concurring tortious acts by two or more actors, each can be held liable for the entire amount of damages incurred. The defendants in such a case would be jointly liable in that collectively they would be responsible for any damage caused; they would also be severally liable in that each is individually liable for the full amount of damage. The plaintiff could collect the total sum of damages awarded from a single defendant and could avoid the agony of multiple suits against the defendants that would otherwise be necessary to achieve full compensation.

Under the theory of contribution, the defendant from whom the plaintiff receives payment may then collect from the other defendants for that part of the damages for which each is responsible. Under the theory of satisfaction, once the plaintiff receives from one or more defendants an amount equal to the judgment awarded, he cannot collect more than that sum.

JOINT AND SEVERAL LIABILITY GENERALLY

Originally, courts were reluctant to impose joint and several liability on defendants in cases wherein the injury suffered was considered "indivisible." Because contribution was not formerly allowed among defendants, courts were reluctant to place the full burden of liability on any one defendant. On the other hand, because the injury was indivisible, the plaintiff had difficulty establishing the respective responsibility of each defendant for portions of the harm. Consequently, courts often denied recovery.

Eventually, as States enacted statutes providing for contribution among defendants, courts became more accepting of joint and several liability and permitted plaintiffs to recover the full amount of damages from a single defendant. The courts concluded that because the defendants were the ones at fault, it would be unfair to place the burden of demonstrating the apportionability of the damage on the plaintiff. The burden was thus placed on the defendants to work out for themselves who was responsible for what part of the injury under the process of contribution. The plaintiff would be allowed to recover his judgment, and the paying defendant would now be reimbursed under one of the new statutes for that portion of the payment for which he was not responsible. Joint and several liability gained its greatest acceptance early in cases involving multiple simultaneous or successive automobile collisions when a single plaintiff was injured by the acts of several negligent drivers.

DIVISIBILITY OF HARM

As stated, the indivisibility of the harm suffered is the key to a ruling of joint and several liability. The harm must be of such a nature that it is not practicably apportionable, for where some reasonable means of apportioning the damages is evident, the courts will generally not hold the tortfeasors jointly and severally liable.

Basically, though, joint and several liability will attach whenever an injury is indivisible. The trick is to determine when an injury can in fact be considered indivisible and thereby permit employment of joint and several liability. This requisite indivisibility can be of two sorts. First, the injury can be the type that is not even theoretically divisible. Damages of this nature are such things as death or the total destruction of one's property or chattel. Most personal injury suits present damages like these. Alternatively, however, the harm can be such that, although theoretically divisible, it is indivisible in a practical sense insofar as the plaintiff's ability to apportion it among the wrongdoers is concerned. Pollution by multiple defendants would usually fall within this classification.

Courts uniformly will permit entire recovery from any or all defendants under the first type of indivisibility. There is conflict, however, regarding the second situation. As stated earlier, where there has been some rational basis for apportioning damages, courts in the past in pollution cases have denied joint and several liability. There is a growing body of case law, however, that holds that a plaintiff's right to recover for his harm should not depend on his ability to apportion the damage; instead, apportionment is seen as a problem properly left to the defendants themselves.

Along these lines, most pollution cases pose a special problem regarding the indivisible injury issue. Because the overall, and allegedly indivisible, harm is caused by a series of independent, concurrent tortfeasors, it is usually the case that some damage would have been done even had some of the defendants not contributed; the damage would not be as great, however, as that actually sustained. In other words, each polluter has contributed to produce some, but not all, of the harm. This is the sort of injury that most earlier cases held to be at least theoretically divisible and which therefore, mandated apportionment of liability. For sound policy reasons, however, courts have begun to view pollution by multiple defendants as a form of indivisible harm by examining the problem from the plaintiff's perspective. Joint and several liability has thus been frequently imposed.

For example, in *Landers* v. *East Texas Salt Water Disposal Company,* 151 Tex. 251, 248 S.W.2d 731 (1952), the plaintiff sued a salt water disposal company and an oil company jointly and severally for damages caused when they independently dumped salt water in his lake. Assuming that neither defendant alone would have caused the entire damages, the court nevertheless decreed that the defendants should be held jointly and severally liable.

As the court concluded:

> Where the tortious acts of two or more wrongdoers join to produce an indivisible injury, that is, an injury which cannot be apportioned with reasonable certainty to the individual wrongdoer, all of the wrongdoers will be held jointly and severally liable for the entire damages and the injured party may proceed to judgment against any one separately or against all in one suit. 151 Tex. at 256, 248 S.W.2d at 734.

Although the court also provided that a defendant could reduce his liability by demonstrating the amount of damage caused by his acts only, or that caused by other defendants, the effect of the decision was to require the defendants, rather than the plaintiff, to show that other tortfeasors contributed to the harm and in what quantities they so contributed. This incentive to locate all other responsible parties is one of the prime considerations underlying use of joint and several liability in pollution suits. In fact, in addition to shifting the burden of proving the cause of plaintiff's injury, the court placed on the sued defendants ultimate responsibility for bringing any other defendants into the suit as codefendants. Facing the prospect of either proving that other parties were also responsible for the injury or paying the full judgment themselves, defendants would henceforth have incentive to insure that no parties have been inadvertently omitted from the suit. As the court in Landers stated:

> If fewer than the whole number of wrongdoers are joined as defendants to plaintiff's suit, those joined may by proper cross action under the governing rules bring in those omitted.

Thus, any responsible parties not named as defendants initially by the plaintiff would be located by the named defendants and included by cross-claim.

The emerging rule of joint and several liability in pollution cases was also noted in *Phillips Petroleum Company* v. *Hardee*, 189 F. 2d 205 (5th Cir. 1951). In that case, a number of rice farmers sued several oil companies for damages to their crops caused by oil pollution of their irrigation water. As in Landers, each defendant's pollution alone was insufficient to cause the whole damage. Nevertheless, the court stated that:

> Where persons acting independently are guilty of negligence and the results of their negligence combine to set up a chain of causation resulting in the complained of damage, these persons, though not acting in concert, are yet joint tortfeasors and as such, are liable for the damage caused by the conjunction of their separate negligence.

That the defendant bear the burden of proving the apportionability of harm in the new wave of pollution decisions was demonstrated well by the leading case of *Michie* v. *Great Lakes Steel Division*, 495 F. 2d 213 (6th Cir. 1974). In Michie, 37 residents of Ontario, Canada, brought suit against three Michigan corporations for damages caused by pollution emitted be the defendants into the ambient air. Rejecting the old Michigan rule denying joint and several liability in pollution cases, the sixth circuit reasoned that, in any claim for relief, there is a manifest unfairness in "putting on the injured party the impossible burden of proving the specific shares of harm done by each (defendant);" 495 F. 2d at 216. As a result, the court placed on the defendants the burden of proving "which one was responsible and to what degree" for the plaintiff's injuries.

As one commentator has noted, after Michie a defendant cannot now escape liability merely by proving that other parties contributed to the injury in such a way as to make apportionment impracticable. See Comment, 1974, Utah L. Rev. 603, 607. The court essentially analyzed the issue as a contest between the rights of individuals and the rights and duties of industry. In the end, the court concluded that the rights of the injured party were superior.

The Michie case thus stands for the proposition that if a plaintiff in a pollution suit can show a causal connection between the defendants' acts and the plaintiff's injury, as well as the violation of some duty owed by the defendants to the plaintiff (whether under negligence or strict liability), the burden of proof will shift to the defendants to demonstrate which defendant is responsible for what portion of the injury. The rule espoused in Michie is similar to that presented in section 433B of the Restatement (Second) of Torts, which provides:

> (2) Where the tortious conduct of two or more actors have combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.

Basically, as both Prosser and the Michie court noted, if apportionability cannot be demonstrated, the acts of each defendant could then be considered a substantial factor in the plaintiff's injury, and each would be liable for the full amount of damages. Contribution among the defendants, however, would prevent one defendant from absorbing the entire loss.

THE IMPACT OF H.R. 7020

While the essence of joint and several liability is thus that multiple defendants are each liable for the full amount of damages unless the feasibility of apportionment can be demonstrated by the defendants, sections 3071(a)(2) (A), (B), and (C) effectively foreclose the possibility that any defendant will ever be held fully liable. Particularly, subsection 2 (B) and (C) emasculate the effect of the indivisible injury rule by providing that a court shall apportion liability even when the defendants have not established that such is feasible or warranted.

Subsection (2)(A) appears to reflect the procedure utilized by most courts in approaching joint and several liability. That section sets up a process by which a defendant may demonstrate by a preponderance of the evidence that he is responsible for only a certain portion of the damage done. If the defendant is successful in proving the limited extent of his responsibility, the injury is considered apportionable to that extent and that particular defendant's liability is limited. The remaining amount of the damages would then be imposed on the remaining defendants.

Ordinarily, if the remaining defendants could not establish their respective liability for the damages left after the section (2)(A) apportionment is subtracted, each would be fully liable for the remaining damages. Subsection (2)(B) changes this rule, however. That section provides that even if the defendants do not establish the apportionability of the remaining damages, the court shall itself apportion the liability. Subsection (2)(C) goes on to provide that once this apportionment has been made by the court, no defendant shall be liable for more than his apportioned share. The effect is that no one defendant can ever be held responsible for the full amount of the damages. Thus, there actually is no joint and several liability in H.R. 7020.

One obvious problem with the apportionment system erected by H.R. 7020 is that a plaintiff—the Government under the present bill—would be forced to seek payment from each of the defendants based on the amount designated by the court as that which he owes. Under a scheme of joint and several liability, where the defendants cannot themselves establish their respective liabilities, each is responsible for the full amount, and the plaintiff may collect that full sum from any one of them. The paying defendant would then have the right to go against the other "nonapportioned" defendants for contribution; the defendants would bear the burden of deciding who would pay how much to whom among them.

The theory behind enabling the plaintiff to collect fully from one defendant is essentially that as wrongdoers, the defendants each bear the burden of proving that he is not liable for the full extent of the damage caused. If the defendant cannot meet this burden and show that he is not fully responsible, then he is fully liable. H.R. 7020 clearly abrogates this theory.

Like my first amendment, this second amendment represents the product of sincere and responsible compromise. Although I believe that several more changes to section 3071(a)(1) are needed to make it reflect more accurately the prevailing common law doctrines, I offer my amendment in the spirit of compromise in order to help ease the negative impact of the present provisions.

As presently written, paragraph 2(B) of section 3071 establishes a perverse incentive system for those who have caused or contributed to hazardous waste incidents. It encourages all defendants, except those who are insignificant contributors, to ignore the burden of proof requirements of paragraph (A) and to cast their lot with any other defendants under the mandated apportionment formula of 2(B). Hence, a major contributor could seek to establish the culpability of other defendants—although he would not qualify the harm contributed by each—to enlarge the pool of liable parties and thereby reduce each defendant's cost obligation.

Conversely, the bill as presently written would also enable a defendant to disregard totally any effort to locate other defendants. The mandatory apportionment provision of paragraph 2(B), when coupled with the cap placed on individual liability by paragraph 2(C), would effectively limit a single defendant's liability even in face of skimpy proof.

My amendment would move H.R. 7020 closer to the common law by insuring that to achieve apportionment under section 2(A), a defendant must prove apportionability by a preponderance of the evidence. This is the common law standard, and it should be part of any legislation like this. My amendment would also make this bill more in tune with the common law by making the apportionment under section 2(B) discretionary on the part of the court. Instead of requiring apportionment in all cases, as the present legislation does, the amendment permits a court to apportion liability when equity requires it. This would enable a court to apportion liability when sufficient evidence allows it, but to deny apportionment when there is no real basis for it. The amendment assists the court in its tasks by providing a list of factors specifically geared to the problems inherent in hazardous waste generation and disposal.

Mr. Chairman, I believe the two amendments that I am offering here today are needed improvements to the liability provisions of

H.R. 7020. They remove the various escape hatches in the present legislation that would enable the parties who are most responsible for our hazardous waste problem to avoid liability. My amendments are simple and straightforward, and they focus on the problems inherent in H.R. 7020 as presently drafted. I again urge my colleagues to support them.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the committee has worked very closely with Mr. Gore on his amendments since he first printed them in the Record on September 4. He has agreed to important modifications in both amendments, and based on these changes, I now find them acceptable.

His first amendment originally contained a provision which would have required that the intervening act or omission of a third party also be "negligent." This would have added an unnecessary and overburdensome requirement on the defendant and Mr. Gore has agreed to delete it from his amendment, and I now find his amendment acceptable.

Mr. Gore has added an additional factor to his second amendment which relates to the discretionary authority of the court to make an apportionment. It allows the court to consider the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of the waste. I think this is a positive improvement and can accept the amendment.

Mr. GORE. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Illinois.

(Mr. Madigan asked and was given permission to revise and extend his remarks.)

Mr. MADIGAN. Mr. Chairman, because we did dispense with the reading of the amendments, I do want to clarify that the amendments that are pending at the desk are the revised Gore amendments which reflect the work that has been done with the other members of the committee.

Mr. GORE. That is correct.

Mr. MADIGAN. Mr. Chairman, I rise in support of the amendments offered by the gentleman from Tennessee, and want to take this opportunity to commend the gentleman for his positive contributions and his efforts to make this bill an effective response mechanism to the enormous problems associated with hazardous waste disposal.

Of particular concern to me and a number of my colleagues on the Commerce Committee during development of this legislation were the liability issues. Especially difficult were the ramifications of retroactive application of statutory liability provisions to past activities of potential defendants. The committee rejected any notion of absolute liability in this regard. While the bill does contain provisions holding defendants who caused or contributed to release resulting in incurrence of cleanup costs by the administrator strictly, jointly, and severally liable for such costs, certain important defenses and safeguards were provided in the interest of due process, fundamental fairness, and avoidance of protracted litigation that would undermine the purposes of this legislation.

This hybrid liability provision was the end result of efforts to be fair and at the same time to make sure that a responsible party would pay for damages that resulted because of his actions or inaction.

I would like to reemphasize at this point, what is clearly and unambiguously set forth in the committee report, on page 33:

> The Committee intends that the usual common law principles of causation, including those of proximate causation, should govern the determination of whether a defendant "caused or contributed" to a release or threatened release. Whether a person caused or contributed to a release is a factual inquiry to be determined with reference to the particular circumstances of the case. Thus, for instance, the mere act of generation or transportation of hazardous waste, or the mere existence of a generator's or transporter's waste in a site with respect to which cleanup costs are incurred would not, in and of itself, result in liability under section 3071. The Committee intends that for liability to attach under this section, the plaintiff must demonstrate a causal or contributory nexus between the acts of the defendant and the conditions which necessitated response action under section 3041.

Of course, these same principles of proximate causation are equally applicable when a defendant, to successfully assert the third-party defense, must demonstrate that a third party caused a release. Thus whenever factual questions of causation arise, the committee intends that the ultimate determination of causation be made by the trier of fact with references to any supervening cause of a release.

The amendments offered by the gentleman from Tennessee do not change the intent of what was developed by the Commerce Committee. The amendments clarify and improve the language and I urge the adoption of the amendments.

Mr. GORE. I thank the gentleman for his support.

Mr. MATSUI. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from California.

Mr. MATSUI. Mr. Chairman, I would like to commend the gentleman from Tennessee for the two amendments he has offered. It strengthens the bill and it makes the bill much more acceptable to me. I certainly hope that the Members will support it.

I would like to enter into a colloquy with the gentleman from Tennessee. This pertains to section 3071(a)(2)(A).

Now, is it the committee's intent to insure that the Federal Government will be fully reimbursed for costs not apportioned under section 3071(a)(2)(A) for providing the court with the necessary discretion to apportion the remaining liability of insolvent parties when the court believes that such apportionment is appropriate or by applying a rule of joint and several liability?

Mr. GORE. That is the intent of the amendment.

And, reclaiming my remaining time, Mr. Chairman, I would like to express my gratitude to the gentleman from New Jersey (Mr. Guarini) who, in the Ways and Means Committee, made many of the arguments that I made in the Commerce Committee on the original amendments that closely resemble these, and thank him for his support in this effort.

I would again like to express my thanks, of course, to the ranking minority member and the chairman of the subcommittee.

The **Chairman**. The time of the gentleman from Tennessee (Mr. Gore) has expired.

(On request of Mr. LaFalce and by unanimous consent, Mr. Gore was allowed to proceed for 1 additional minute.)

Mr. **LaFalce**. If the gentleman will yield, I want to rise in support of the amendments offered by the gentleman from Tennessee (Mr. Gore). They are absolutely essential if we are to have meaningful liability provisions in superfunds.

I also want to point out that initially the gentleman from Tennessee was going to offer a third amendment, and because of the legislative realities of this body and the position taken by the administration, he has made the decision not to do so.

I want to underscore the fact, however, that at some point in the future, and perhaps very soon in the future, the Congress—and I hope the Senate when they are dealing with their superfund when they take action on it—will have to come to grips with the issue of a mechanism to give compensation to individuals who have been injured by exposure to toxic substances.

I have introduced legislation, the Federal Toxic Tort Act, which creates a Federal cause of action that is not incorporated in this superfund bill, it is not incorporated in the amendments of the gentleman from Tennessee (Mr. Gore) which, by and large, have been agreed to by all of those parties interested in this issue, but at some point in the future we must adopt a Federal Toxic Tort Act.

Mr. **Stockman**. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendments.

I will say to the Committee that we have had a very nice, technical and friendly discussion here, implying to someone who might be listening that these are relatively uncontroversial matters and that we simply can proceed without any further discussion.

But I would like to suggest to the Members of this House that some day down the road about a year from now they are going to receive a letter from a company in their district that has just received a $5 or $10 million liability suit from EPA that was triggered by nothing more than a decision of a GS-14 that some landfill, some disposal site somewhere, needed to be cleaned up and, as a result of an investigation that his office did, he found out that that company in your district contributed a few hundred pounds of waste to that site 30 years ago.

Now, that is what the liability section in this bill does. The liability that we are creating in H.R. 7020 has nothing to do with what some of the lawyers in this body would understand as the normal liability provisions under common law or under State law, because under that regime a plaintiff would have to go to court and a plaintiff has to demonstrate that damage has been done, a plaintiff has to demonstrate that the party accused caused that damage in a negligent way. And in the case of a very serious hazardous material, if the negligence defense is to be set aside, the plaintiff has to demonstrate to the court that the material involved is of such an ultra-hazardous nature inherently that strict liability should apply.

But we do not have any of that in this bill. In this bill, strict liability occurs every time and immediately that EPA decides to clean up a site on the basis of absolutely no criteria because we did not put any in the bill.

In other parts of the bill, we give EPA plenary authority to clean up any waste site in the country, and that waste site is undefined. And once they make that decision on the basis of whatever criteria they establish, whatever kind of risk notions they may use, whatever kind of cost-benefit notions might appeal to the single-mission oriented people who may run this program in the Division of Hazardous Waste, once they move ahead and clean up, then their first action after that cleanup order or that cleanup financing if they do it directly or through the State government, will be to see if they can find some deep pocket somewhere in the vicinity who contributed, not that ran a disposal site, not that ran a transportation company, but just an industrial firm, a foundry, a plastics plant, anything that contributed waste any time in the foggy past that might be included in this list of 1,165 items that I have read.

And once they have found that deep pocket, they will immediately go to court and sue that deep pocket, and then all of the onus of the law, all of the burden will be on him to prove that he was not responsible for an outcome that occurred 30 years later as a result of this retroactive liability.

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I think that this whole liability provision, I will say to the House, is really a terrible distortion of any kind of notions of justice or equity and any kind of practical notion of how we ought to go about paying for those sites that need to be cleaned up.

Then let me say further to this House that when you get that letter from the XYZ firm, you will receive a letter 3 weeks later and you will find that EPA has decided to sue for civil penalties 2½ times the cleanup and that, instead of paying $5 million for the cleanup costs, your firm will be paying $12½ million for the civil penalty that was sought in court by EPA because they concluded this company had contributed 30 years ago and was not cooperative in their efforts to have this site cleaned up and therefore needed to be sued.

I do not know how much damage, I do not know how much harassment we want to do to the industrial economy in this country that is literally faltering today out from under our feet, that is in recession, that has 8 million people unemployed, that is losing its productivity growth, that cannot compete in the world market today. We discuss and deal with those problems and we are here unleashing an enormous club.

Mr. BAUMAN. Mr. Chairman, I move to strike the requisite number of words.

Let me ask this question.

The gentleman from North Carolina (Mr. Preyer) has sent a letter to all of us regarding the Gore amendments in which he opposes the gentleman's amendments. Perhaps they have been changed to meet his objections. I do not see him here, but he is a member of the gentleman's committee. He makes some rather persuasive arguments, at least to my Georgetown law-trained mind, that the bill's provisions, as they are already stringent enough, and perhaps the gentleman from Michigan or the gentleman from Tennessee or both, would like to comment.

I understand some changes have been made as they are now offered that perhaps meet his objections, but it gives me some pause if they have not been made.

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding.

I can state categorically that the gentleman from North Carolina supports both of the amendments that we have under discussion, and if I may indulge on the gentleman's time to respond to the comment earlier, of course, under strict liability, proof of causation would first have to occur. I think the gentleman, with all due respect, stated a theory of strict liability that really is at variance with the common law.

Second, there is only unanimous consent that strict liability would apply for these ultrahazardous substances under the common law in any event.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Michigan.

Mr. STOCKMAN. I think the point the gentleman is trying to make and I wish the gentleman from Tennessee would respond, because he seems to be the primary advocate of these provisions, is that under the structure of this bill if EPA decides to clean up a site, that automatically creates liability for any operator of that site or any past generator who cannot come into court and demonstrate there was a third party at fault due to the negligence of that third party or an act of God caused the release or other hazards. Is that correct?

Mr. GORE. With the gentleman's indulgence, that is not the case. Proof of causation must occur. One must prove the damage was caused by the defendant. There is not an automatic trigger. But once the damage is proven to have been caused by the defendant, then a strict liability standard would apply.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New Jersey.

Mr. FLORIO. The gentleman's point is really at two levels. One is he is talking about ability to sue for reimbursement of the funds, but he has also expressed apprehension EPA is going around to automatically start cleaning things up and suing someone. That situation is not going to occur because EPA is required not to act if the responsible party or parties will take appropriate action to clean up and contain these sites.

If, in fact, they do not do so, or do not care to do so or are not able to do so, then EPA is charged with the responsibility of going forward, and even before they go forward, they are required to make agreements with the State, if the State has the inclination to do so and the ability to do so.

So the gentleman's situation is just not realistic if he describes EPA as out cleaning things up randomly. That is not going to happen under this bill.

If I could make one other point with regard to the Gore amendment, I have a letter, and I would place it in the RECORD, from the Chemical Manufacturers Association which advocates support of this bill, H.R. 7020, and concludes moreover that they do not object to the compromise which we understand has been worked out on the Gore amendments.

The letter follows:

CHEMICAL MANUFACTURERS ASSOCIATION,
Washington, D.C., September 22, 1980.

Hon. JAMES J. FLORIO:
House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. FLORIO: The Chemical Manufacturers Association believes that the House should approve effective, properly focused legislation addressing problems associated with abandoned, failing hazardous waste sites.

The Commerce Committee version of H.R. 7020 is the product of a thoughtful bipartisan compromise. It offers workable regulatory, legal, and funding resources to address abandoned waste sites. We support its enactment.

Moreover, we do not object to the compromise which we understand has been worked out on the Gore amendments.

Sincerely,

EDMUND B. FROST,
Vice President and General Counsel.

We are talking about two different types of Gore amendments, the ones introduced and the ones modified which now have widespread support.

Mr. GORE. If the gentleman will continue to yield, I think it is also fair to add to that colloquy that the fabric of the compromise is not limited solely to the textual changes in the two versions of the amendments.

Mr. STOCKMAN. If the gentleman will yield further, I would just say in response to the gentleman that I realize causation has to be shown, but in this context the only requirement to show causation is that somebody contributed to the site.

When you have a landfill that is 30 years old and oozing with muck, it is pretty impossible to determine what particular chemical released at what date and contributed in what quantity caused the release that may have threatened public health or caused the presence of materials that encouraged EPA to act. It is a very simple burden, and EPA will have no problem proving it.

Mr. GORE. If the gentleman will yield further, one must first prove causation. If one cannot prove the defendant caused the damage which led to the suit, then the strict liability standard is never triggered.

Let me also add that is not something new. Let me just read the gentleman a list of those activities that currently invoke the strict liability standards.

Strict liability for abnormally dangerous/ultrahazardous activity originated with the historic case of *Ryland* v. *Fletcher*, 159 Eng. Rep. 737 (1865), rev'd, L.R. 1 Ex. 265, aff'd. L.R. 3 H.L. 330 (1868). In Rylands, the defendant was held liable without fault when a reservoir built on his land broke through the ground, and flooded an abandoned coal mine shaft. The water flowed along connecting passages and eventually flooded and damaged the adjoining mine of the plaintiff. In holding the defendant strictly liable, Lord Cairns, speaking for the House of Lords, concluded:

> (I)t seems but reasonable and just that the neighbor who has brought something on his property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischevious if it gets on his neighbor's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. L.R. 3 H.L. 330 at 338.

In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today, numerous activities have been held to constitute abnormally dangerous-ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. See Prosser, Law of Torts 512-16 (1971). Undoubtedly, as litigation involving hazardous waste develops, courts will add the generation and disposal of such wastes to the list of ultrahazardous activities. Indicative of this is the recent case of *New Jersey* v. *Ventron Corporation,* Nos. C-2996-75 and C-1110-78 (Superior Court of New Jersey, Chancery Division, Bergen County, Aug. 29, 1979), a case cited by the Justice Department in its correspondence and its testimony before the Committee on Ways and Means, in which a mercury processing operation was held strictly liable for damages caused by a release of mercury from its plant.

Mr. JEFFORDS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. Jeffords asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. Mr. Chairman, as a cosponsor of the Hazardous Waste Containment Act I wish to commend the fine work of Mr. Gore, Mr. Florio, Mr. Madigan, and other Members involved in the formulation of a compromise solution to the liability questions in H.R. 7020. Their work is typical of the cooperative efforts of majority and minority Members who have contributed to this legislation which addresses one of our most pressing national issues.

As recent events have indicated, the problem of abandoned hazardous waste sites is serious and widespread across our Nation. A study done for the Environmental Protection Agency (EPA) by Fred C. Hart Associates estimates there are between 1,200 and 2,000 hazardous waste sites which could pose serious health risks and environmental damage. Even in my own State of Vermont, which has a fine record of environmental protection, there are potentially serious situations which may involve abandoned hazardous waste.

Tragic instances such as Love Canal and the Valley of the Drums which threaten our public health and the environment are all too familiar. By far the most common and potentially serious damage resulting from these sites is the contamination of ground water. In examining just 128 incidents, the Congressional Research Service found over 1,300 wells had been closed, affecting the water supplies of thousands of people. These situations have radically altered the long-held view that the earth could always be utilized as a natural filter for disposed wastes.

Few Members of this House would deny the desperate need for this and other legislation. H.R. 7020 fills a crucial gap in current law by providing the EPA with authority and resources to clean up hazardous waste sites. This legislation creates an emergency fund to locate, assess, and, where necessary, clean up abandoned hazardous waste dumpsites.

The bill would also establish liability rules for payment into the fund by those persons responsible for having improperly disposed of hazardous waste. These payments would reimburse the fund for cleanup and other costs. This legislation complements the current EPA authority under the Resource Conservation and Recovery Act to control the disposal of hazardous wastes being produced, and the pending comprehensive spill cleanup authority contained in H.R. 85. Prompt action by this House and the Senate is essential if we are to adopt a responsible, comprehensive approach to this critical problem.

Although I support H.R. 7020, I believe it is imperative that the amendments being proposed by Mr. Gore to the liability provisions of this bill are necessary in order to conform the bill to prevailing State common law and the purposes of this act.

State common law generally holds that abnormally hazardous activity justifies the imposition of strict liability on the parties involved in the activity. Information supplied to my office by the Justice Department indicates that most recent court decisions have identified the disposal of hazardous waste as an abnormally dangerous activity and have imposed strict liability on the persons involved.

Under the prevailing common law, defendants could be relieved of strict liability if the release of hazardous waste results from an unforeseeable occurrence outside the control of the defendant. Some cases have held the defendant liable despite the intervening actions of a third party. Other cases have released the defendant from liability where the release of hazardous waste was due to the negligent actions of a third party who was not under contract or control of the defendant. The unamended version of H.R. 7020 would not follow either line of common law cases by allowing defendants to escape liability even if the release was unforeseeable and within the possible control of the defendant. We must not allow a producer of hazardous materials to escape liability in instances where that producer released the waste without taking proper precautions to safeguard public health and the environment.

The amendment being offered by Congressman Gore limits the defense of intervening actions of a third party to instances where the defendant did not have a contractual relationship with the third party, and where the defendant can prove that the defendant exercised due care and that the release resulted from the negligence of a third party. This will help insure that a producer of hazardous waste is held responsible for releases of hazardous waste which that producer could have forseen and could have acted to prevent.

Although this first amendment offered by Congressman Gore does not eliminate the defense of third party intervention, it does make the liability provisions more consistent with common law. The Justice Department and the National Association of Attorneys General have both taken positions in favor of relieving liability because of acts of God, and not because of intervening actions of a third party. Fortunately, this bill does not limit the application of rules of common law which may impose strict liability regardless of the intervening actions of third parties. Thus, individuals or the affected governments may still recover costs and damages for releases of hazardous waste under the applicable State common law.

I also wish to record my support for the second amendment being offered by Congressman Gore which would affirm the discretion of courts to apportion liability among solvent parties who are held jointly and severally liable for a release of hazardous waste. While the intent of the unamended bill may have been in conformity with the prevailing common law, the language of H.R. 7020 is in need of revision.

The prevailing common law does not require courts to apportion liability among defendants who are held jointly and severally liable where the proportion of harm attributable to a particular defendant has not been established. The imposition of mandatory apportionment could result in attempts by the parties liable for a release of hazardous waste to allocate a large portion of the liability to insolvent defendants.

As the discussion on this floor will indicate, the total costs being recovered under this act are intended to be recovered from among the solvent liable parties. The adoption of the second amendment offered by Mr. Gore would eliminate mandatory apportionment of liability and clarify the intent of this House that any apportionment of liability is to be among solvent parties. The amendment would insure that those jointly and severally responsible for releases of hazardous waste are held fully liable for the full costs of the release.

These two amendments would protect the prevailing common law rules from federally established exceptions which could allow the evasion of liability by those producers and disposers responsible for releases of hazardous waste. These amendments are necessary for a cohesive and consistent treatment of this legislation and to insure that those who cause a waste problem will be required to pay for the remedy. We should not allow the responsible parties to evade the costs of cleanup at the expense of the taxpayers.

I urge the Members of this House to support the amendments being offered by Mr. Gore, and wish to thank the cosigners of my letter urging the adoption of this compromise position, Mr. Seiberling, Mr. Anderson, and Mr. George Brown, for their assistance in this matter.

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Tennessee.

Mr. GORE. The law has evolved for quite some time on this point. This is not a radical change. This is very much in keeping with the tradition of the law.

Let me just express at this point my deep thanks to my colleague from Vermont who stood up at a key moment in the development in the evolution of this legislation and these amendments and sent around a "Dear Colleague" to every Member of this House saying, "Yes, I have examined the legal theories involved here. I have taken the time to read all of the analysis associated with these amendments, and I support them. I recognize what is being done here, and I ask members on both sides of the aisle to support this amendment." It is an example of the bipartisan support which has led to the kind of bill we have before us and the kind of amendments that have generated the support which is evident for these amendments.

I thank my colleague, the gentleman from Vermont (Mr. Jeffords) very deeply. With those kind remarks I have nothing more to say.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Tennessee (Mr. Gore).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Eckhardt: Page 29, after line 13, insert:

"(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from releases associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

☐ 1810

Mr. ECKHARDT. Mr. Chairman, this amendment is grounded on 18 days of hearings. [Sec.104(i)(5)] We had looked into the question of the studies that were made with respect to the Love Canal area. We found in that case the Federal Government initiated a study to use in its litigation against the Hooker Chemical Co. There had been many other studies conducted by both the Federal Government and the State of New York and other persons, some of which disagreed with each other. They come from various sources. There was no responsibility of an agency of the Federal Government primarily dealing with the question of health which would have caused some credible examination to be made.

The result is that the studies resulted in too much delay in getting some persons out of that area where danger actually existed and perhaps to greater generation of a feeling of fear among those who were ultimately relocated.

It was during our May 22 hearing that the subcommittee carefully examined H.R. 7020 to determine if it contained adequate funds for health services. Much to our chagrin and surprise at that time, it did not so contain the provision. It was contained in an earlier Florio bill but was dropped in the draft before us.

Therefore, the gentleman from Tennessee (Mr. Gore) and myself felt that this was an extremely necessary amendment. I am offering it on behalf of myself and on behalf of the gentleman from Tennessee (Mr. Gore), as a means I think of affording a very necessary definition of responsibility.

I believe that the amendment is widely supported. I am pleased to say that our effort is being supported actively by the gentleman from New York (Mr. Lent) who is the ranking minority member on my subcommittee, and by the gentleman from Connecticut (Mr. Moffett), whose committee heard this matter with us. I also understand that his ranking minority member, the gentleman from California (Mr. McCloskey) favors this matter.

We have cleared this or discussed it with both the majority and the minority.

Mr. Chairman, I yield at this time to the gentleman from New Jersey (Mr. Florio).

Mr. **Florio**. Mr. Chairman, the gentleman is correct. We have reviewed his amendment and think it is valuable and we are prepared to accept it.

Mr. **Eckhardt**. Mr. Chairman, I yield to the gentleman from Illinois (Mr. Madigan).

Mr. **Madigan**. Mr. Chairman, I want to thank the gentleman for yielding and tell him that the gentleman from New York (Mr. Lent) has been in contact with me and has urged me to support the amendment of the gentleman from Texas. We intend to do that and urge the committee to do likewise.

Mr. **LaFalce**. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this is an extremely important amendment. I remember when I first visited the Love Canal site in the summer of 1977. I went into the basements of the people who lived on either side of the site on 97th and 99th Streets. I knew from what I saw and I knew from what I smelled that we had a serious problem there that was probably affecting the health of the people living in the nearby area.

I immediately called in representatives from the Environmental Protection Agency, from the State Department of Environmental Conservation, and so forth; but it took almost 1 year, it took until August 1978 for the State health commissioner to determine that there was a serious hazard to human health. It then took him an additional 8 months or so until February 1979 to conclude that the dangers extended beyond what had become known as Rings 1 and 2 on 97th and 99th Streets to a much larger area. Then it was only in May 1980 that the Environmental Protection Agency concluded that because of recent studies they had done pursuant to investigations by the Justice Department in connection with a lawsuit brought against the Hooker Chemical Co., that perhaps the area should be expanded still further.

In all of these endeavors, the one thing that we do know for sure is that the state of man's knowledge about the effects of human exposure to toxic substances is very limited. We have had very little research on the State level, very little research in the private sector, very little research on the Federal level.

The state of knowledge that exists in the National Institute of Environmental Health Sciences, the state of knowledge that exists in the National Institute of Occupational Health and Safety, within the entire Department of Health and Human Services, within EPA, is very limited. A study of this nature and this scope is absolutely imperative. I really think that everyone, regardless of their position on superfund, should join in support of it.

The **Chairman**. The question is on the amendment offered by the gentleman from Texas (Mr. Eckhardt).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. **Solomon**. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the amendment be considered as read and printed in the Record.

The **Chairman**. Is there objection to the request of the gentleman from New York?

There was no objection.

The amendment is as follows:

Amendment offered by Mr. Solomon: Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulation shall provide for the annual allocation for grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.

"(e) USE OF FUND.—Notwithstanding any other provision of law, not more than 25 percent of the amount credited to the Fund established by the Hazardous Waste Containment Act of 1980 may be used for providing assistance under this section.".

Page 50, after line 15, insert:

"Sec. 3012. Assistance for State or regional facilities.".

Mr. SOLOMON. Mr. Chairman, this amendment does nothing to change any provision of this legislation for the first 2 years of its effectiveness, however at the end of 2 years, the amendment implements a procedure whereby up to 25 percent of these funds could be used to make 50 percent matching grants to State agencies, interstate agencies, or State permitted facilities—which could be local governments or private sector business. For the purpose of building and constructing high technology facilities that would neutralize, incinerate, or recycle hazardous waste, these grants to be issued based on the priority needs to be determined by the Environmental Protection Agency.

Mr. Chairman, I commend the committee and particularly the committee chairman and ranking minority member for their outstanding work on this very difficult subject. But I am deeply concerned about H.R. 7020 as it is currently drafted. From an environmental perspective, this legislation is indeed shortsighted. It encourages the proliferation of new landfills and the expansion of existing landfills rather than the development of high technology facilities which would destroy or neutralize toxic wastes.

My amendment would earmark a small percentage of the fund for matching grants to States which are willing to construct total systems high technology facilities for the environmentally sound disposal of toxic waste.

The construction of high technology facilities to reclaim, incinerate, or neutralize hazardous waste is the surest way, in fact, the only way, to assure an environment protected from the future potential—hazards of chemical waste.

By failing to address the very important and necessary method for future control of such waste, Congress implies that the best way to deal with hazardous waste is to bury it in the ground.

My amendment would allow the Government to encourage the development of facilities which can completely destroy or neutralize hazardous waste. At present the only method available to most generators of hazardous waste is landfills. What Congress is proposing by enacting the superfund will result in a proliferation of landfills.

I would also like to emphasize that my amendment would take effect 2 years from the date of enactment of the superfund. In this way the primary purpose of the legislation—to provide the authorities with a way to respond to release of hazardous waste from inactive hazardous waste sites which endanger public health and the environment—the primary purpose of the legislation would not be adversely affected by my amendment. In fact, the amendment will strengthen the bill.

I would like to comment briefly on the statement by the chairman of the New York State Senate Committee on hazardous waste. To quote the chairman:

> The Federal Government would be wiser if it took strong steps to encourage the States to immediately begin to look at the final answer to hazardous waste, and this means the destruction or neutralization, rather than the storage, of toxic and leachable chemical waste in landfills.

As I have already pointed out, this superfund legislation will actually increase the number of landfills across the country and will expand existing landfills that may already pose a threat to this Nation's drinking water. Over 50 percent of all Americans depend on ground water for their drinking water supply, and the creation of more landfills may jeopardize this vital water supply.

Evidence is growing that a possible correlation exists between the thousands of existing landfills and the health of our people. We can no longer afford the continued use of the archaic technology of landfilling to solve this serious environmental problem.

I would also like to point out that this amendment is very similar to an amendment I offered and the House unanimously accepted to H.R. 85 last week. That amendment directs the Environmental Protection Agency to insure the development and use of environmentally sound technologies to incinerate or chemically destroy dredged PCB's. I hope the House sees fit to take the same action on this amendment.

The American people can no longer afford the luxury of waiting for the proper environmental disposal of hazardous chemical waste. Acceptance of my amendment will give a positive demonstration to the people of this country that Congress is determined to solve the total problem of hazardous waste disposal, now. Thank you.

☐ 1820

The **Chairman**. The time of the gentleman from New York has expired.

(At the request of Mr. LaFalce and by unanimous consent, Mr. Solomon was allowed to proceed for 1 additional minute.)

Mr. **LaFalce**. Mr. Chairman, will the gentleman yield?

Mr. **Solomon**. I am happy to yield to the gentleman from New York.

Mr. **LaFalce**. Mr. Chairman, I want to rise in support of the concept behind the amendment offered by the gentleman from New York (Mr. Solomon). I think he does point out a serious problem that must be approached.

I am not sure the amendment is the best way of approaching it. I think there are better ways. I am not sure that this bill is the appropriate bill to attach the amendment to, but because I do support the concept I am going to support the amendment.

Mr. **Solomon**. I thank the gentleman.

Mr. **Florio**. Mr. Chairman, I rise in opposition to the amendment.

I rise in reluctant opposition, I might add, because I know the gentleman is sincere in his concern as to how we are going to dispose of these wastes. Let me assure the gentleman that first of all there is no bias toward disposing of these materials in landfills but we are very sensitive to the need to develop the technology for more appropriate disposal. In fact, we have money for research and development in the bill designed to have the new technologies for cleanup and containment developed.

Furthermore, we do have a study in the bill for the development of procedures for siting.

I would just suggest the gentleman's approach is not perhaps fully appropriate because he is taking some 25 percent of the moneys that we need, and many of us feel they are inadequate, for cleanup and containment for emergency situations, and will allocate them away from emergency response and instead toward more desirable disposal technologies. I would just say that the gentleman from Illinois (Mr. Madigan), the gentleman from Texas (Mr. Eckhardt), myself, and a number of other Members have requested from the OTA, the Office of Technology Assessment, a full and comprehensive study with regard to these new types of technologies and how we in the Congress can, if in fact we should, play a role in facilitating and providing incentives to move in that direction.

I would reluctantly oppose the gentleman's amendment because I am not convinced this is the appropriate place to deal with that very important problem.

Mr. **Solomon**. Mr. Chairman, will the gentleman yield?

Mr. **Florio**. I am happy to yield.

Mr. **Solomon**. If the gentleman could give me some assurances, then I certainly take the gentleman's word for it, that his committee will continue to concentrate on this and move in that direction then I would withdraw the amendment at this point.

Mr. **Florio**. Without any difficulties I will give the gentleman those assurances.

Mr. SOLOMON. Mr. Chairman, I ask unanimous consent that the amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Eckhardt: Page 13, after line 19, insert:
>
> "(f) INTERIM SITES.—Not later than six months after forms are made available for the collection of information under this section from inactive hazardous waste sites, the Administrator shall require, pursuant to his authority under part 1 of this subtitle, to the extent he determines necessary, the submission of the information referred to in subsection (a)(2) (C) and (D) with respect to hazardous waste sites operating under interim status pursuant to section 3005(c).

Mr. ECKHARDT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ECKHARDT. Mr. Chairman, this is an amendment that meets the problem that I have run into in my area, but it is not limited to my area. It happens that a great amount of the chemical industry is located along the Houston Ship Canal. There is a landfill with the poetic name "The Whispering Pines Landfill." I think that probably illustrates something of the problem. That beautiful name indicates its proximity to a suburban addition. It is under an interim permit. There are all kinds of things put into that landfill that the residents close by do not know about.

Of course, this is a class A landfill and may receive any type of waste except radioactive waste.

In a situation like that, we feel that EPA, under its existing authority regulations, should apply a rule which requires information to be submitted, just as in the case of inactive landfills.

In the amendment we have delayed the time for such action for 6 months after the original information required of inactive sites and we have given EPA flexibility to require less information with respect to these sites as opposed to inactive sites.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding and would state that this House has already gone on record in the RCRA amendments, which are presently in conference, supporting the position of the gentleman. Accordingly, I have no difficulty in supporting it now.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding. Earlier in the day the gentleman from Texas (Mr. Eckhardt), the gentleman from North Carolina (Mr. Broyhill), and myself had a conversation concerning a change in this amendment that would have inserted the discretionary authority for the Administrator of EPA, and I would ask the gentleman if that is the amendment we are now considering.

Mr. ECKHARDT. The gentleman is correct.

Mr. MADIGAN. I want to thank the gentleman for that information and say to the gentleman and to the House that the minority would be supporting this amendment.

The question is on the amendment offered by the gentleman from Texas (Mr. Eckhardt).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STOCKMAN

Mr. STOCKMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Stockman: Page 5, strike out lines 5 through 18 and insert in lieu thereof the following:

"(1) 'Inactive hazardous waste site' shall have the meaning prescribed by the Administrator in accordance with subparagraph (1)(A) of this section.

"(A) Not later than 120 days after the date of enactment of this Act, the Administrator shall promulgate a final rule establishing the definition of 'hazardous waste site' and submit such final rule to the Congress for review in accordance with subparagraph (1)(B) of this section. In developing such final rule, the Administrator shall consider—

"(i) the characteristics of the sites that would be encompassed in the proposed definition;

"(ii) the quantity and characteristics of the materials located at sites that would be encompassed in the proposed definition;

"(iii) the magnitude of the threat to public health and safety posed by the sites that would be encompassed in the proposed definitions; and

"(iv) the costs and benefits to the nation as a whole of alternative definitions that encompass a larger or smaller number of sites than the proposed definition.

"(B)(i) Any final rule promulgated by the Administrator under this paragraph shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce, respectively.

"(ii) Any such final rule shall become effective unless, before the end of 30 calendar days of continuous session after the date such rule is submitted to Congress, either House passes a resolution stating in substance that such House does not approve such final rule."

Mr. STOCKMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. Mr. Chairman, I offer this amendment in order to follow up on the point that I had been trying to make this afternoon. That is within the structure of this bill we practically make the EPA the czar over every inactive site and some active sites anywhere in the country where any material has ever been deposited. The reason I say that, of course, is the definition of hazardous site or hazardous material under the RCRA regulations is so encompassing that it is up to 1,165 items now and it will continue to grow [Sec. 101].

I gave some indication of what some of those items were a while ago. Everything is covered, practically, and certainly I do not think it is the intention of this House or either any of the Members who are sensitive to the problem, the Love Canal type problem that we are addressing here today, it is not the intention of this House to have the EPA turned loose to begin to investigate, monitor, dig up and clean up every one of the thousands, tens of thousands and hundreds of thousands of sites that would fit the very loose and vague and elastic definitions of the basic matter that we are seeking to remedy and regulate in this bill.

It seems to me it would be very difficult for this House or the committee to write a regulation or to write statutory language as to what the hazardous sites are that we need to have a program focused upon. But we could do something that would be almost as good and that is to require EPA to write such regulations, such definitions to circumscribe the universe of those sites that we are going to go after and then send it back up to the Hill for us to approve.

□ 1830

In that way we can make a determination as to whether or not this new superfund program and the vast powers that it delegates to EPA will be focused on the Love Canals or other similar sites, the Valley of the Drums and many that have been named here this afternoon, or whether it is going to be directed indiscriminately at every municipal landfill, every rubbish pile that EPA can find around the country. My amendment is very simple. it is just a legislative veto, a legislative approval over the regulations that EPA would write defining the universe of covered sites that would then trigger all of the activities under this bill.

It seems to me that that is a prudent and careful approach that should have been included in the committee bill and that this House ought to consider today because I would remind this House that we are back again in that basic dilemma of having to make cost-benefit decisions, having to spend literally billions of dollars from our national economy that would otherwise be available for other of our needs, both public and private, that might be available otherwise for investment or for job creation, that—unless we carefully subscribe the scope of this bill and unless we limit the inventory and the clean-up activities to the truly hazardous, threatening site—will be used for marginal situations, marginal sites that we simply cannot afford today to clean up as a country.

So by offering this amendment I am providing a mechanism whereby this whole superfund apparatus and the powers that are delegated to EPA could be tightly and finally targeted on the real subject of attention that Members of this House are properly concerned about. I would urge that the committee chairman and the members of the committee who have been here today and have been attentive throughout this entire debate consider this amendment because it is not designed to gut the bill, to dilute it or weaken it as some have suggested regarding other initiatives a while back, but this is a constructive effort designed to insure that we do not unleash vast undefined powers to an agency, to incur costs, to impose burdens that our economy simply cannot afford at the present time.

I would be happy to yield to the gentleman from New Jersey (Mr. Florio) if he has a response to the amendment.

Mr. FLORIO. I think it would be appropriate perhaps to oppose the amendment on my time as opposed to taking the gentleman's time.

Mr. Chairman, I rise in opposition to the amendment. I really have a difficult time determining what the real purpose of the amendment is. Where there is an Administrative Procedures Act that provides for the implementation of regulations, the only foreseeable consequence of the enactment of this amendment, as I can see it, is just delay. The fact of the matter is that this whole bill has been based on a responsible approach. There is a precedent. There is a good body of knowledge in terms of definitions. The agency will be the same implementing this law, and I just see no purpose for this amendment. Accordingly, I would ask for opposition to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. Stockman).

The amendment was rejected.

The CHAIRMAN. Are there other amendments to section 5? If not, the Clerk will designate the next section.

Section 6 reads as follows:

[See H.R. 7020, as reported, p. 188.]

The CHAIRMAN. Are there amendments to section 6? If not, the Clerk will designate the next section.

Section 7 reads as follows:

[See H.R. 7020, as reported, p. 190.]

The CHAIRMAN. Are there amendments to section 7? If not, the Clerk will designate the next section.

Section 8 reads as follows:

[See H.R. 7020, as reported, p. 192.]

The CHAIRMAN. Are there amendments to section 8? If not, the Clerk will designate the next section.

Section 9 reads as follows:

[See H.R. 7020, as reported, p. 192.]

The CHAIRMAN. Are there amendments to section 9?

● Mr. WOLFF. Mr. Chairman, I rise to express my support for the immediate passage of H.R. 7020, the Hazardous Waste Containment Act of 1980, of which I am a cosponsor.

There is no question that enactment of such a "superfund" is a beginning in addressing the most critical environmental problem plaguing the Nation—and indeed a problem that may have been with us longer than we ever anticipated. Its passage would mark a milestone for the 96th Congress.

I would like to lend my support for the Ways and Means version of the bill. This version more realistically approaches the problem by allotting a greater sum of money to the trust fund, and better apportions the division between industry and Government as to who should "pick up the tab." I believe that the industries responsible for creation of the problem should bear the major burden for its cleanup. Witness for example, the debacle at Love Canal, whose innocent victims now bear the brunt of relocating, and the psychological questions of the effects these chemicals have had on them.

For New York, this bill takes on added priority. New York simply does not have the resources to initiate its own systematic plan for identifying and clean up its waste sites. Where possible, the State has attempted to force owners of sites, or the responsible parties to start cleanup on their own, however the difficulties encountered in enforcing this action, and the sheer enormity of the problem in the State, has demonstrated the need for national legislation.

For my district, the results of chemical dumping in the groundwaters of Long Island has been devastating. The groundwaters are the sole source of drinking water for over 3 million residents. As was previously reported by my colleague, Mr. Ambro, the New York Public Interest Research Group released results of an in-depth study in July reported very disturbing news. NYPIRG stated that, "as pollution spreads deeper within the island's aquifers, without sophisticated treatment, the entire underground water reserve will eventually become contaminated and unfit as a source of public water supply." NYPIRG attributed Nassau County's high cancer rate, at least in part, to the drinking of polluted water. People in Suffolk and Nassau Counties as well as in parts of Jamaica, Queens, are dependent upon this water which has become "seriously contaminated with toxic organic chemicals * * * and consequently, millions of people consume toxic contaminants in their water on a daily basis."

At recent hearings held by the Subcommittee on National Parks and Insular Affairs in Long Island, I called for congressional oversight hearings to determine how effective antipollution legislation is being implemented nationally as well as locally. Today, I reiterate this point. As important as passage of H.R. 7020 is, it is still only a drop in a very dirty bucket in the massive problem of fighting pollution.●

● Ms. OAKAR. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act. This kind of legislation is long overdue. Although we have been aware of the dangers to public health from leaking chemical dumps for years, it is only now that we are finally acting on legislation to clean up these dumps and to hold their owners strictly accountable under the law.

I am especially concerned about this problem because the Nuclear Regulatory Commission and the Environmental Protection Agency have investigated alleged leaking of uranium radiation from a chemical dump in my district. Concerned families who live near this dump in Newburgh Heights, Ohio, claim that toxic wastes stored in this dump may be responsible for an outbreak of skin rash that has occurred among many of their children.

These children have been examined by doctors who express grave concern over a possible connection between the rash and exposure to the radiation and wastes in the dump. At my urging, the EPA is looking into this situation to obtain the evidence necessary to take action against those parties responsible for the health and safety hazards posed by the dump site.

Of equal concern to me is the need to deal responsibly and effectively with the hazards involved in radioactive nuclear waste. We must develop a proven method for the same and permanent disposal of the millions of gallons of hazardous waste produced by this country's nuclear powerplants. In spite of GAO studies that show the lack of a reliable technology for the safe and permanent containment of radioactive waste, the Department of Energy has refused to assure me and other Members of Congress that such waste will not be buried underneath one of the most heavily populated areas of the country.

I am referring specifically to areas of northern Ohio, much of Michigan, and parts of Pennsylvania, West Virginia, and New York State, where underground salt caverns are being studied by the Energy Department for possible burial of nuclear waste. To address this serious situation, I have introduced legislation that would both suspend the licensing of nuclear powerplants until an in-depth study has been done by the Office of Technology Assessment and would forbid the Energy Department from building a nuclear waste disposal site underneath, within, or near heavily populated areas.

To address this serious situation, I introduced in April 1979, a bill entitled the Nuclear Reactor Moratorium and Waste Disposal Prohibition Act, H.R. 3581. This legislation would suspend the licensing by the Nuclear Regulatory Commission of nuclear fission powerplants, until such time that the Office of Technology Assessment completes a comprehensive study on the operational safety of such plants.

Also, my bill would prohibit the Department of Energy from locating or building a nuclear waste disposal site underneath, within, or near any densely populated areas. Legislation such as mine would send a clear message to the Energy Department that the American people will not tolerate the burial of highly radioactive and potentially deadly nuclear garbage in caverns that lie underneath their homes and backyards.

We urgently need legislation to clean up active or inactive chemical waste dumps. We need as well legislation to prohibit the location of chemical dump or nuclear waste disposal sites anywhere near populated areas. It is time we have learned from the suffering of those families of the Love Canal community and other areas and enact strict laws to protect the American people against the clear and present danger of chemical and nuclear waste sites.●

● Mr. MARKEY. Mr. Chairman, I rise in strong support of the Ways and Means Committee substitute to increase the funding level of superfund to $1.2 billion **[Secs. 221 and 303]**.

In the Commerce Committee, I fought for doubling the $600 million figure. I also testified before the Ways and Means Committee in support of increased funding. I bring these strong feelings of support to the floor today.

Last Friday, we heard 2 hours of debate on Superfund. We heard a number of horror stories to back up the need for this legislation.

I told my colleagues of the devastating situation that my constituents in the city of Woburn, Mass. and the neighboring community of Reading are facing:

Twice the expected leukemia rate in an area populated by only 1,500 people;

Two wells needing to be closed as a result of contaminated drinking water;

A stench too powerful to be tolerated; and

A legacy of arsenic pits, chromium, and hills of rotting animal hides left from negligent chemical plants and tanneries.

The scenario that I gave was only one isolated situation. And we heard a number of others. We also heard over and over again the warning that we do not know how many undiscovered waste sites exist all across our land. We cannot take this lightly.

We seem to have arrived at the consensus that the hazardous ramifications due to irresponsible waste dumping is indeed the critical environmental issue of this decade.

But, Mr. Chairman, if the House does not agree to the Ways and Means substitute, then we will have failed to come to grips with the magnitude of this problem.

The $600 million figure in the Commerce version of superfund is barely enough to begin to address the hazardous waste sites that we already know exist; $600 million is not the original figure in the Commerce bill—that figure was $1.3 billion. As I told my colleagues on the Commerce Committee, lowering the funding level to $600 million was a political compromise which had insufficient data to support it. It was a political compromise to get the bill out of committee.

Last year, Fred C. Hart, Associates conducted a preliminary assessment of the costs of cleaning up toxic waste sites. That study estimated that the number of hazardous waste sites across the country is between 32,000 and 50,000. The study also estimated that the number of sites with significant environmental and health problems may range between 32,000 and 50,000.

More information from an EPA Task Force lends credence to the Hart projections. The task force has identified more than 4,700 sites over the past 8 months. It is adding approximately 200 sites per month to its list.

Mr. Chairman, using this information from a nonbiased source, the full scope of the problem begins to come into focus.

At my request, the EPA sent me a memorandum which states that the EPA could clean up an additional 180 to 200 sites with additional funding, the memorandum states that the cost of remedial action will average around $3.5 million per site.

I urge my colleagues to take a good, hard look at these figures and ask yourselves if $600 million begins to come down to addressing the Woburns, the Love Canals, and the Valleys of the Drums that we know are devastating the environment and contaminating our groundwater, and also those toxic waste sites yet to be discovered.

I say that this funding is not adequate and the political compromise which was made to arrive at the $600 million figure is unacceptable. I refuse to allow the politics of expediency to weaken this bill.

My constituents in Woburn deserve better.●

● Mr. SANTINI. Mr. Chairman, I rise in support of the substitute offered by Mr. Stockman. In my judgment, this amendment is a workable alternative that will deal effectively with the legitimate concerns of the public with respect to hazardous waste sites for which no responsible parties can be located.

I strongly oppose H.R. 7020 as reported from the Interstate and Foreign Commerce Committee. As we do all too often, Congress has identified a problem and then created a mechanism out of proportion to the problem we want to solve. There is no need to act so precipitously in creating another regulatory behemoth. The Stockman substitute offers a reasonable solution to resolve a specific problem. This alternative gives control of cleanup directly to the people who live in the affected States—not to a distant bureaucracy in Washington, D.C.

During this election year many of us will hear countless speeches about an overreaching Federal Government. Some of us will give such speeches. Yet with this legislation the House would be creating a new device which leaves tremendous discretion to the Administrator of EPA. Before we grant such authority I believe it is incumbent on the proponents of the legislation to assume the burden of proof to show not only that an evironmental problem exists, but that H.R. 7020 is the best mechanism by which to solve it.

That burden of proof has not been met by the authors of the bill. H.R. 7020 suffers from serious infirmities which extend far beyond the question of environmental protection. At the top of the list is the precedent being set for placing "fees" on feedstocks which will go into a fund which may not be spent for cleanup of wastes caused by the person making the payment [Sec. 211]. It should be emphasized that this bill does not regulate the current disposal practices of waste generators. It is for the cleanup of problems resulting from past practices. Rather than going after the "midnight dumpers" who ought to be prosecuted, the proponents of the legislation would place a fee on companies now operating who may, in fact, have complied with all existing rules regarding waste disposal.

Are we next going to see a fee placed on current industries for the purpose of cleaning the waters which were polluted by others in the past? With a little time, I am sure some Members could come up with other solutions.

The use of fees is justified by the supporters of the bill on two grounds. First, it is alleged that the companies being assessed are probably responsible in some way for the problem because many have been in business for a long time. I do not find much credibility in that argument because little proof is offered to suggest that is, indeed, the case.

The argument loses much of its validity because of the method by which the assessment is made. Rather than place a fee on the facility generating the waste, the legislation places it on the feedstock. By doing so, the cost is being placed on inorganic elements which are not harmful in their natural state. As Mr. Moore indicated during general debate, nickel is not regarded as particularly hazardous. Is it appropriate, then to put the fee on a material we all carry in our pockets in our coins? Should this additional financial burden be placed on an industry which must compete with subsidized producers overseas? Our Nation is already dependent on imports for many of the most critically strategic minerals. Putting an additional fee on the elements will only exacerbate our mineral dependence on foreign nations.

The cost of this fee will be borne either by the companies involved or by the American consumer. Neither is in a position to absorb additional financial burdens.

The proponents of H.R. 7020 also argue that industry fees are necessary because of the difficulty of persuading appropriations committees to support large governmental expenditures. It seems to me that if the problem is as great as described there should be no difficulty in obtaining adequate Federal funding. Clearly, if this legislation is of such high priority the appropriations should be available. I am concerned that as fiscal constraints become tighter, superfund will serve as a precedent for funding new governmental programs out of the pockets of industry, and ultimately, the consumer. This provides an interesting method of balancing the Federal budget; lower Federal spending by placing the costs on the private sector. It will be all too easy to establish large new programs by passing the costs on to someone else. Then we can proudly point to our "balanced" budget. The taxpayer would not have the burdens but the consumer will.

That is certainly a prescription for inflation. With OMB out of the picture, Federal agencies need not feel constrained from using high-cost methods of reclaiming waste sites under this bill, or who knows what else under the future programs this legislation will spawn. The incentive to use the least cost alternatives will be gone if industry is to foot the bill rather than the Federal Government.

I intend to vote for the Stockman substitute which has none of the infirmities I have discussed.●

● Mr. MAGUIRE. Mr. Chairman, we in the Congress are painfully aware that the problems of toxic waste and chemical waste storage and disposal are the new environmental crises of the 1980's. I say painfully because we have all witnessed the heartbreak and pain suffered by the residents of Love Canal, N.Y.; we all breathed a sigh of relief when the explosions at the Chemical Control Co. of Elizabeth, N.J., and an industrial park in Perth Amboy, N.J., did not turn into the nightmare that we all fear; and we were all stunned by the aerial photographs revealing the careless disregard that became the Valley of the Drums.

As in the past when the Congress has been forced by external events to come to grips with serious environmental crises, we have enacted several pieces of legislation that will force us to think before we leap. As the catalog of chemicals produced in this country expands by 1,000 entrants each year, the regulatory requirements imposed by the Toxic Substances Control Act, and the Resource Conservation and Recovery Act will hopefully decrease the number of Love Canals and Elizabeth, N.J.s in the future. I say decrease and not eliminate because the report on Health Effects of Toxic Pollution issued by the Surgeon General's Office concludes that we shall continue to respond to a series of environmental emergencies in the 1980's. I believe that if we are to face those emergencies in an appropriate and timely manner, we must begin today by demonstrating our support for a hazardous waste cleanup fund that foreshadows our seriousness and resolve.

I urge my colleagues to support the Ways and Means Committee amendment to H.R. 7020, the Hazardous Waste Containment Act, I say this not because I believe that the amendment makes the bill a true superfund, but because I believe that the Ways and Means amendment addresses the enormous problem facing us in a more equitable and aggressive manner.

The Ways and Means amendment places the major burden of the fund not on the public treasury, but on the chemical companies who, knowingly or not, benefitted from the unsound and careless disposal practices of the past. Indeed, it might be argued that the 25 percent public contribution called for by the Ways and Means amendment is too great a burden for the public to bear. [Sec. 221]. It is, however, a burden that we must bear for our negligence and lack of foresight, and will serve as a constant reminder that if we miss the opportunity to do it right from the beginning, we must pay the excessive costs of cleaning up our mistake.

The Ways and Means amendment doubles the size of the fund from $600 million to $1.2 billion. Although the magnitude of the increase appears dramatic, we know as we debate this issue today that $1.2 billion will only make the first few dents in the cleanup task that lies before us. The legislation directs EPA to establish a list of 100 "top priority sites" from among the estimated 30,000 to 50,000 inactive dump sites, 2,000 of which present a serious threat to the public health [Sec. 105(8)]. I feel true sympathy for the Assistant Administrator at EPA who will have to implement decisions on the top 100 sites as he is hounded by 435 Representatives and 100 Senators each with his or her own priority site. It is clear that 535 requests cannot be squeezed into 100 slots. I hope that 5 years from now we reauthorize the fund at a greater amount to clear up those sites that were left behind in the sweepstakes for top priority designation.

It is also my hope that the chemical industry will act independently to clean up its past mistakes. I am sure that many of my colleagues have notice the advertisements, placed neatly in the op-ed sections of many major newspapers, informing the public of the sound jobs that the chemical industry was doing to insure that its wastes were disposed of in an environmentally sound manner. I would urge our friends in the industry to turn their creative talents witnessed by these ads to the problem of cleaning up those sites that were established without the dedication and public mindedness that we are asked to believe characterize today's efforts.

Mr. Chairman, a vote for the Ways and Means amendment represents a recognition not only of the dimension of the problem that faces us today, but also of the continued commitment that we must make to cleaning up all of the 30,000–50,000 inactive and uncontrolled hazardous waste sites that poison our Earth and our water supplies and pose the threat of disease and death to countless of our citizens now and for generations to come.

Thank you.●

● Mr. LUNDINE. Mr. Chairman, I rise in support of H.R. 7020, legislation to authorize establishment of a "superfund," jointly financed by the Federal Government and private industry, to address the serious and growing problem of the cleanup of inactive and abandoned hazardous waste sites around the country. In addition, I urge adoption of the Ways and Means Committee recommendation of $1.2 billion for the fund and the accompanying allocation of financial responsibilities among industry and Government.

The Environmental Protection Agency estimates that there may be up to 50,000 abandoned hazardous waste sites around the country that will require an average per site cleanup cost of about $3 million. One only has to examine the horrors of a Love Canal, as we have in New York State, to appreciate the scope and depth of our national problem.

At the same time, I am deeply concerned that this legislation is not permitted to go far enough to establish a comprehensive and future oriented national program. The Environmental Protection Agency will shortly finalize standards promulgated in accordance with provisions of the Resource Conservation and Recovery Act of 1976. In addition to our action here today, we have an obligation to take the necessary steps to insure the successful implementation of these standards. This may include provisions for technical and financial assistance to industries and local governments to develop alternate waste disposal sites and innovative handling technologies.

It has taken EPA nearly 4 years to promulgate regulations to implement improved safety standards for disposal of our hazardous wastes. The neglect that has plagued the hazardous waste disposal business over this century cannot be reversed overnight. Early indications are that implementation of these regulations may prove excessively costly and cumbersome to our industries and local governments. Rather than attempt to cope with increased costs and responsibilities of continuing to operate county landfills, many local governments will simply close their operations and many businesses find ways to dispose of these wastes illegally.

For example, in my congressional district, Chautauqua County, N.Y., has been providing environmentally acceptable hazardous waste disposal services to industries in the area for many years. After an initial examination of the proposed EPA regulations which will begin to take effect on November 19, the county has indicated they can no longer afford the liability connected to upgrading and maintaining hazardous waste disposal facilities.

As a result, Chautauqua County businesses in search of an alternate disposal capability will be forced to truck their wastes to an industrial waste processing facility two counties away at an estimated increase in costs of $70 per ton. And, this estimate does not include the cost of transporting these wastes for disposal. Needless to say, such an increased economic burden could endanger the survival of marginal industries.

It is absolutely essential that the Federal Government provide a workable plan not only for the inactive hazardous waste disposal sites, but that we also address the critical long-term problem of developing and siting a patchwork of strategically located, convenient, and environmentally acceptable disposal facilities for future use. If such an effort is not made, the result may be chaos at the local level as existing disposal sites are forced to close and businesses are strained for methods and capacity to dispose of their wastes.

I urge your support of H.R. 7020, but also urge your acknowledgment that additional steps are necessary to insure the transition to an acceptable long-term hazardous waste disposal system for this county. Congressional consideration of this matter cannot stop with enactment of this legislation, but must be given additional and continued analysis as the EPA moves to implement their proposed regulations.●

● Mr. GRASSLEY. Mr. Chairman, I want to thank you and all the members of the House committees involved in the legislation for your sustained effort in getting this measure to the floor of the House. With so many interests and issues to address, I think all of us owe the members of the committees a great debt in finding a middle ground.

My interest in this problem began with a problem which arose in my district many years ago. I have addressed the Members of this body on the need for this type of legislation in June of 1979. I have had the pleasure of testifying before Congressman Florio's subcommittee on my early efforts to solve this problem. Furthermore, I feel honored to have contributed something to the solution of this dangerous situation which will probably face most of us at some time in the near future.

With thousands of inactive hazardous waste dumpsites across the Nation, legislation is needed that provides an emergency response to this imminent danger. I fully support the House proposal and applaud the members of the committees for thoughtfully addressing these difficult issues. All the people of Third District of Iowa support your swift efforts on their behalf.●

● Mr. GOLDWATER. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. This bill would establish a sizable "superfund" which would pay for the cleanup costs of inactive or abandoned dumpsites which leak hazardous wastes and which would also pay for the cleanup costs of those future dumpsites that may pose a substantial danger to our Nation's environment and the public's health. Furthermore, H.R. 7020 authorizes $35 million for a State inventory of their inactive hazardous waste sites so that the Environmental Protection Agency will be able to assess which disposal sites require prioritized attention.

The problem of improperly stored hazardous wastes has been highly publicized. Our industrial society has long been producing significant amounts of hazardous wastes which are not always safely stored. Although Love Canal is the most publicized incident of hazardous wastes storage practices gone haywire, it is certainly not the first. Questionable disposal procedures by careless transporters, inadequately prepared storage facilities, and a general lack of specific laws which pinpoint generators and transporter responsibility has left our society victimized by a quagmire of conflicting and confusing legal puzzles. H.R. 7020 is needed to assure the public that instead of more studies, we are willing to act quickly and decisively to heal this country's dumpsite sores and to respond to future hazardous emergencies. I do not mean to imply that our industry carelessly disregards safe storage procedures—that is simply not the case. The truth is that industry goes to great lengths to insure the safe transportation, disposal, and storage of hazardous wastes. New, improved procedures for the handling of chemicals and chemical wastes have been adopted by industry.

Mr. Chairman, although many of my colleagues may be just starting to familiarize themselves with the hazardous waste problem, I have long been concerned about this issue. As a matter of fact, I am sponsoring a measure which would provide for the safe and permanent disposal of nuclear wastes. Several years in its development, H.R. 7418 is coming to fruition. If we had had the foresight years ago to develop a similar disposal and storage plan for chemical wastes, we might not have had to debate this legislation today.

In my own congressional district, I have held extensive, well-publicized hearings on a hazardous waste landfill in Calabasas, Calif. The single most important lesson I learned from that hearing was the need on the part of Congress, industry, Government, and the public to immediately address the hazardous waste problem, and propose workable solutions. I believe H.R. 7020 offers just such a practical answer.

The Environmental Protection Agency estimates that there are hundreds of disposal sites which may pose health and environmental problems. Disconcertingly, that may just be the tip of the hazardous waste "iceberg." Like the "unsinkable" ship of over 70 years ago, our society may continue to believe in its own infallible ability until it is too late to prevent the disaster. I urge my colleagues to support H.R. 7020.●

● Mr. FISHER. Mr. Chairman, today the House completed action on two landmark proposals which create two "Superfunds": One fund to pay for the cleanup of oil and chemical spills in navigable waters; the other will cover the cleanup of abandoned hazardous waste sites.

The first bill, H.R. 85, is noteworthy particularly because it is entirely industry financed and provides funds for the Government to take action on future oil and chemical spills before they cause extensive destruction and public harm. Furthermore, the bill permits local governments, business entities, and private citizens to file claims against the fund for certain specified reasons. These include property damage, damage to natural resources, and loss of earnings due to the foregoing.

While H.R. 85 helps protect against future catastrophies, H.R. 7020 addresses problems caused by past mistakes which have left behind hazardous waste sites. The improperly disposed wastes are now seeping through the group and are contaminating the land and water around them. According to the Environmental Protection Agency (EPA), there are over 1,000 abandoned sites across the country urgently in need of attention. The fund created by H.R. 7020 is now of sufficient size, after the House correctly approved an amendment to increase the fund, to pay for cleaning up the 250 sites characterized by the EPA as the most dangerous. Unlike its companion bill, both industry and Government would contribute to the fund in H.R. 7020 [Sec. 211 and 221]. Industry contributes 75 percent with the remaining 25 percent coming from Government appropriations. Although some have argued that this 75 percent–25 percent split imposes an undue burden on industry, it is important to keep in mind that industry can take a business tax deduction for its contributions to the fund. Consequently, this contribution ratio actually results in industry bearing only 42 percent of the cost. Furthermore, the Government can try to recover its share of the costs from those identifiable parties responsible for the improper disposal.

Recent revelations about such tragedies as Love Canal in New York highlight the need for this legislation. At Love Canal, highly toxic wastes, buried in the 1950's, have now seeped through the ground into the basements of homes and businesses posing a real threat to the health of people living there. We simply cannot ignore the potential dangers from these abandoned sites. We must take steps now to make these areas of the country safe for the people who live and work there.

I have enthusiastically supported both bills and intend to urge my colleagues in the Senate to pass this clearly needed legislation before the 96th Congress adjourns.●

WAYS AND MEANS COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the Ways and Means Committee Amendment.

The Clerk read as follows:

Ways and Means Committee amendment:

[See H.R. 7020, as reported, p. 192.]

Mr. ULLMAN (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of the Ways and Means Committee amendment and that it be printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

AMENDMENT OFFERED BY MR. ULLMAN TO THE WAYS AND MEANS COMMITTEE AMENDMENT

Mr. ULLMAN. Mr. Chairman, I offer an amendment to the Ways and Means Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. ULLMAN to the Ways and Means Committee amendment: Insert after section 4662(a)(2) of the Internal Revenue Code of 1954, as proposed by the Committee amendment, the following:

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

Mr. ULLMAN. Mr. Chairman, the committee amendment requires the Treasury Department to issue regulations under which any petrochemical feedstock, a principal use of which is use as a fuel, will be subject to the chemical tax only when it is used other than as a fuel. For example, the committee understands that more than four-fifths of all domestic consumption of methane is for fuel purposes. Therefore, this feedstock would be a taxable petrochemical feedstock only when used for nonfuel purposes [Sec. 211].

I urge adoption of the committee amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. Ullman) to the Ways and Means Committee amendment.

The amendment to the Ways and Means Committee amendment was agreed to.

The CHAIRMAN. The question is on the Ways and Means Committee amendment, as amended.

The Ways and Means Committee amendment, as amended, was agreed to.

Mr. FLORIO. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN, Without objection, the Chair recognizes the gentleman from New Jersey (Mr. Florio).

There was no objection.

(Mr. Florio asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Chairman, I have an inquiry of the Chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. Ullman). I would like to ask the gentleman a question concerning the Ways and Means Committee's actions on H.R. 7020, the Hazardous Waste Containment Act of 1980.

Mr. ULLMAN. Mr. Chairman, if the gentleman will yield, I will be happy to respond to any questions the distinguished gentleman from New Jersey might have. Let me first state, however, my earnest hope that he and I will be able to work together to move this very important piece of legislation—for which the gentleman from New Jersey deserves so much credit—through the Congress before adjournment.

Mr. FLORIO. I thank the gentleman for his support. Mr. Chairman, the Committee on Ways and Means would amend H.R. 7020 to impose specific excise taxes on various petrochemical feedstocks and inorganic substances in lieu of the fee system contained in the bill reported by the Committee on Interstate and Foreign Commerce [Sec. 211]. I have no objection to that portion of the amendment. However, the Ways and Means Committee also would place the revenue so raised in a "hazardous waste response trust fund [Sec. 221]." I am concerned with the scope of that provision in the amendment. Would the gentleman from Oregon explain why a trust fund is appropriate in a case such as this?

Mr. ULLMAN. It has been the custom of the Committee on Ways and Means, when we are asked to raise revenue from a narrow segment of the economy for specific purposes related to the activities of that segment of the economy, to put the revenues so raised into a trust fund. The purpose of these trust funds is to give some assurance to the particular industry that the money taken from them will be used for the intended purposes. In the absence of a trust fund the revenues would go into the general fund and might never by spent for the purposes originally intended. In return for the guarantee offered by the trust fund mechanism, we have found industries are less opposed to the new taxes. If the purposes of a trust fund are too narrowly drawn, however, the authority of the committee having jurisdiction over the basic subject matter addressed by the trust fund is unnecessarily restricted.

On the other hand, if the purposes for which a trust fund may be used are too broadly defined, it is likely that demands upon the fund will exceed the moneys available in it. In this case the pressure upon the Ways and Means Committee and the Congress to increase taxes or invade general revenues would be very great. Thus, in creating trust funds, the Ways and Means Committee has worked very hard to strike a balance between three competing considerations.

First, the very real need to assure taxpayers that revenues collected from them will be used for the purposes intended by the Congress and that they will not receive a surprise tax increase in later years.

Second, the need to leave the maximum possible latitude and flexibility to our colleagues in the Congress who sit on committees of substantive jurisdiction and who, therefore, have the real expertise with respect to the details of the programs for which the trust funds are created.

And finally, the need to assure all our colleagues that when we promise to fund a program out of specific tax receipts, we will not be forced in later years to finance that program out of general fund revenues.

Mr. FLORIO. Would the gentleman further explain how the trust fund would function?

Mr. ULLMAN. The fund would be available for all the purposes set out in the bill reported by the Committee on Interstate and Foreign Commerce. The Ways and Means Committee has no difficulty with the purposes recommended by the Committee on Interstate and Foreign Commerce and has recommended a tax sufficient to fund those purposes.

Mr. FLORIO. The balance that has been struck appears reasonable to me. The jurisdiction of the Commerce Committee and Ways and Means Committee would be consonant with the jurisdiction that exists with respect to other trust funds. Does the distinguished gentleman from Oregon concur in my understanding?

Mr. ULLMAN. The gentleman is correct, I might also say to the gentleman that the arrangement proposed with regard to the hazardous waste response program is totally consistent with other trust fund arrangements which have worked smoothly over the years. Such funds include the airport and airway trust fund, the black lung disability trust fund, the Inland Waterways trust fund, and the highway trust fund. In the past, when the authorizing committees have sought to amend the programs supported by these trust funds, we have worked successfully with those committees. I am sure that the Ways and Means Committee and the Interstate and Foreign Commerce Committee will have no difficulty in working together to find a solution to the serious national problems posed by hazardous waste sites.

Mr. FLORIO. I thank the gentleman for his helpful explanation and am appreciative of his contributions to this legislation.

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Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Texas is recognized for 5 minutes.

There was no objection.

(Mr. Eckhardt asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, we have heard that the provisions of this bill may do severe economic damage to the competitive position of the American chemical industry. I believe that such statements do a great disservice to the industry. The chemical and allied products industry had shipments valued at $152 billion in 1979, making it the fourth largest U.S. manufacturing industry. It is exceeded only by the food processing, transportation equipment, and nonelectrical machinery industries.

Moreover, chemicals continue to be one of the few bright spots in our balance of trade. In 1979, chemical exports hit a record $17.3 billion, while imports were $7.5 billion, a trade surplus of $9.8 billion, another record for the industry. The chemical industry is sound and does not need to be subsidized. In sharp contrast to motor vehicle sales to the auto industry, where foreign passenger car sales total some 20 percent of all cars sold in the United States, in 1979 imported chemicals and allied products totaled less than 5 percent of the value of U.S. shipments. It is high time that we internalized all the costs of chemicals—both production and disposal—so that they can play their appropriate role in the American marketplace.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Murtha) having assumed the chair, Mr. Natcher, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, pursuant to House Resolution 773, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MARTIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 351, nays 23, not voting 58, as follows:

[Roll No. 579]

YEAS—351

Abdnor
Addabbo
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Chappel
Cheney
Carr
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
de la Garza
Deckard
Dellums
Derrick
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hanley
Harkin
Harris
Harsha
Heckler
Hightower
Hinson
Holland
Hollenbeck
Holt
Holtzman
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness

Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McDade
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathias
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Russo
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Stewart
Stokes
Studds
Swift
Tauke
Tauzin
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—23

Archer
Ashbrook
Collins, Tex.
Crane, Daniel
Crane, Phillip
Dannemeyer
Gramm
Hance
Hansen
Jacobs
Jeffries
Jones, Okla.
Kelly
Leath, Tex.
Loeffler
McDonald
Paul
Rousselot
Rudd
Stenholm
Stockman
Stump
Synar

NOT VOTING—58

Alexander
Anderson, Ill.
Andrews, N.C.
Ashley
Badham
Beard, Tenn.
Bethune
Bowen
Brown, Ohio
Butler
Carter
Cavanaugh
Davis, Mich.
Davis, S.C.
Derwinski
Dodd
Edwards, Calif.
Evans, Ga.
Evans, Ind.
Ford, Tenn.
Gingrich
Grassley
Hawkins
Hefner
Heftel
Hillis
Ichord
Jenkins
Jenrette
Leach, La.
McCormack
McEwen
McKay
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moore
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Pa.
Nedzi
Nowak
Pepper
Rhodes
Santini
Seiberling
Steed
Stratton
Symms
Taylor
Vento
Wilson, Bob
Wilson, C. H.
Wydler
Wylie
Young, Alaska

☐ 1850

The Clerk announced the following pairs:

Mr. Jenrette with Mr. Rhodes.
Mr. Santini with Mr. Carter.
Mr. Vento with Mr. Bob Wilson.
Mr. Evans of Georgia with Mr. Wylie.
Mr. Hawkins with Mr. McEwen.
Mr. Musto with Mr. Symms.
Mr. Murphy of New York with Mr. Beard of Tennessee.
Mr. Mitchell of Maryland with Mr. Brown of Ohio.
Mr. Mineta with Mr. Butler.
Mr. Alexander with Mr. Wydler.
Mr. Ashley with Mr. Derwinski.
Mr. Hefner with Mr. Badham.
Mr. Dodd with Mr. Taylor.
Mr. Davis of South Carolina with Mr. Bethune.
Mr. Bowen with Mr. Davis of Michigan.
Mr. McCormack with Mr. Gingrich.
Mr. Pepper with Mr. Young of Alaska.
Mr. Stratton with Mr. Grassley.
Mr. Moorhead of Pennsylvania with Mr. Mitchell of New York.
Mr. Murphy of Illinois with Mr. Hillis.
Mr. Nedzi with Mr. Moore.
Mr. Nowak with Mr. Ichord.
Mr. Steed with Mr. Charles H. Wilson of California.
Mr. Jenkins with Mr. Leach of Louisiana.
Mr. Edwards of California with Mr. Andrews of North Carolina.
Mr. Cavanaugh with Mr. Ford of Tennessee.
Mr. Evans of Indiana with Mr. Heftel.
Mr. McKay with Mr. Myers of Pennsylvania.
Mr. Seiberling with Mr. Anderson of Illinois.

Mr. Loeffler changed his vote from "yea" to "nay."

Mr. Flippo changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL CORRECTIONS IN ENGROSSMENT OF H.R. 7020, HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. **FLORIO**. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 7020, the Clerk be authorized to make necessary technical corrections, including section numbers, punctuation, and cross-references.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

☐ 1900

GENERAL LEAVE

Mr. **FLORIO**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Calendar No. 1138

96TH CONGRESS
2D SESSION

H. R. 7020

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, JUNE 12), 1980

Received; placed on the calendar

AN ACT

To amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

FINDINGS

SEC. 2. The Congress hereby finds that—

(1) hazardous waste has been disposed of throughout the United States in a manner which has resulted in, and which may in the future result in, dangerous releases;

(2) the exact location of many such hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) releases of hazardous waste can cause harm to public health and the environment;

(5) modern disposal practices using the existing state of the art technology permit containment of dangerous releases from hazardous waste sites; and

(6) a systematic method of funding for purposes of identifying, containing, and taking other remedial actions with respect to inactive hazardous waste sites is necessary to protect public health and the environment in a cost effective manner.

GOALS

SEC. 3. The goals of this legislation are to—

(1) provide for a State-by-State inventory of inactive hazardous waste disposal sites and the condition of such sites;

(2) evaluate such sites, and set priorities among the sites, based on the danger they present;

(3) establish a program to assure the containment of dangerous releases from inactive hazardous waste sites;

(4) accelerate the elimination of the presence of any unsafe hazardous waste disposal sites; and

(5) provide a systematic method of funding for the identification of inactive hazardous waste disposal sites, the evaluation of such sites, and for the containment and other remedial action with respect to such sites to assure protection of the public health and the environment in a cost effective manner.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply only to inactive hazardous waste sites, except as otherwise explicitly provided. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste, and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

Where two or more noncontiguous areas meet the requirements of subparagraphs (A) and (B) and where they are reasonably related on the basis of geography or on the basis of the threat, or potential threat, to public health or the environment, the Administrator may treat such areas as a single inactive hazardous waste site for purposes of this Act.

"(2) 'Petrochemical feedstock' means the following: liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals: ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, and methane other than that used to make ammonia.

"(3) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(4)(A) 'Supply' means, with respect to petrochemical feedstocks or inorganic elements and compounds, the production, manufacture, or importation of such feedstocks or compounds.

"(B) 'Supplier', with respect to petrochemical feedstocks or inorganic elements and compounds, means any person who supplies such feedstocks or compounds and who either—

"(i) provides, through sale or any other means, the feedstocks or elements and compounds to other persons, or

"(ii) uses the feedstocks or elements and compounds himself.

"(5) 'Threatened release' means a condition or situation where there exists a substantial likelihood that a release into the environment from or at an inactive hazardous waste site is imminent.

For purposes of this part, the terms 'inorganic elements and compounds', 'crude oil', and 'refiner' shall have the meanings prescribed by the Administrator, by rule.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2) with respect to such site, to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection with respect to each such site is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraphs (1) and (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (2) or such information as may be necessary to compile the information described in paragraph (2) to the extent that such information is known to or reasonably determinable by such person. The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the

State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"(f) INTERIM SITES.—Not later than six months after forms are made available for the collection of information under this section from inactive hazardous waste sites, the Administrator shall require, pursuant to his authority under part 1 of this subtitle, to the extent he determines necessary, the submission of the information referred to in subsection (a)(2) (C) and (D) with respect to hazardous waste sites operating under interim status pursuant to section 3005(e).

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Containment Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'. To the extent practicable, the administrator shall include in such list of the one hundred top priority sites at least one site in each State. The site so included shall be the inactive hazardous waste site designated by the State under subsection (a) as having the greatest danger to public health and the environment of all the sites in that State which are included in the inventory carried out under section 3031.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at an inactive hazardous waste site presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that a responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that an inactive hazardous waste site presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain, and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order and with respect to the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include (i) assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, (ii) restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and (iii) assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that a responsible party or the State or local government concerned will otherwise take the proper action. This paragraph shall apply only to those sites which have been listed by the Administrator under section 3032(b) as top priority sites.

"(3)(A) Upon receipt of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste into the environment from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or the environment, and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may, notwithstanding section 3021, provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or "(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in, or order, the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or the environment due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

"(8) Anyone ordered or authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk of harm to public health or the environment.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties is ordered to take action, or if the Administrator determines that such party will voluntarily take action, under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and the environment at the site under consideration,

"(2) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or the environment; and

"(3) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) INTERIM SITES.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at a hazardous waste site which is operating under interim status pursuant to section 3005(e) presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may, notwithstanding section 3021, take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that a responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any hazardous waste site which is operating under interim status pursuant to section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating under interim status pursuant to section 3005(e) presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence with respect to the sites to which this subsection applies. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating under interim status pursuant to section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release into the environment' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating under interim status pursuant to section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk of harm to public health or the environment.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating under interim status pursuant to section 3005(e), if one of such responsible parties is ordered to take action or if the Administrator determines that such party will voluntarily take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and the environment at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health, safety, or the environment; or

"(C) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

"(f) WAGES.—(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Administrator shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

"(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

"(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from releases associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3042. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out under this part;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions pursuant to this part shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites undertaken pursuant to section 3041. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into for purposes of remedial action under such section 3041 shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"STATE CONTRIBUTION

"SEC. 3043. (a)(1) Not more than 90 per centum of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 10 per centum of such total costs shall be paid by the participating State in which the inactive hazardous waste site concerned is located. No amount may be expended by the Administrator for any such action unless the State in which such hazardous waste is located has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources, "(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which the Administrator has taken any action under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January

1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $500,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment

Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's 10 per centum share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts collected as fees under section 3052,

"(B) an amount equal to all amounts recovered by the United States under subpart F,

"(C) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(D) any penalties assessed under this part, and

"(E) amounts authorized to be appropriated to the fund under paragraph (3).

"(2) The total amount deposited in the Fund which is derived from the fees collected under section 3052 and from appropriations under paragraph (3) shall not exceed—

"(A) $100,000,000 for the fiscal year 1981,

"(B) $150,000,000 for the fiscal year 1982,

"(C) $150,000,000 for the fiscal year 1983, and

"(D) $200,000,000 for the fiscal year 1984.

"(3) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $50,000,000,

"(B) 1982, $75,000,000,

"(C) 1983, $75,000,000, and

"(D) 1984, $100,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for emergency response, removal, containment, cleanup, and other action carried out under subpart C, including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"FEES

"SEC. 3052. (a) IMPOSITION OF FEE.—(1) Under regulations promulgated by the Administrator, there shall be imposed on—

"(A) each supplier of petrochemical feedstocks, a fee for each pound of petrochemical feedstocks supplied to any other person or used by such supplier,

"(B) each supplier of inorganic elements and compounds, a fee for each pound of inorganic elements or compounds supplied to any other person or used by such supplier, and

"(C) the receipt by any refiner of crude oil and the export by any person of crude oil, a fee per barrel of crude oil received or exported.

Such fees shall be imposed annually and on the basis of a schedule of rates established by the Administrator at such level as he annually estimates as necessary to recover the amounts specified in subsection (b). The schedule shall be modified annually by the Administrator in accordance with this section.

"(2) The inorganic elements and compounds subject to the fee imposed under this subsection are—

"(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, mercury, the equivalent weight of barium in barium sulfide, antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide, cobalt, nickel, the equivalent weight of tin in stannic chloride and stannous chloride;

"(B) chlorine, the equivalent weight of fluorine in hydrofluoric acid and bromine;

"(C) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid;

"(D) elemental phosphorus; and

"(E) such other inorganic elements and compounds as the Administrator may by rule provide, based upon information available to him as a result of listing or characterizing hazardous wastes or of implementing this Act.

"(3) Any determination by the Administrator under paragraph (2)(E) to subject any other inorganic element or compound to the fee imposed under this subsection shall be based upon three or more of the following—

"(A) A finding by the Administrator that the raw material from which such element or compound is derived, including intermediates and products of such raw material, is hazardous in more than one form.

"(B) A finding by the Administrator that the generation of the raw material, intermediates, or products, from which such element or compound is derived results in hazardous waste.

"(C) A finding by the Administrator that the raw material from which the element or compound is derived is produced in large amounts.

"(D) A finding by the Administrator that the raw material from which the element or compound is derived is capable of increasing the hazard potential of other raw materials.

"(4) No fee shall be imposed under this subsection on any quantity of feedstock or element or compound with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (A) or (B) of paragraph (1). Except for a fee imposed under such subparagraph (A) on the sale or use of petrochemical feedstocks derived from any crude oil, no fee may be imposed under paragraph (1) on any crude oil with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (C) of such paragraph (1).

"(6) For a period of three years after the initial date on which fees are imposed under this section, no fee shall be imposed under this section with respect to any petrochemical feedstock or inorganic element or compound which is used in the fertilizer production industry. If the Administrator determines that the use by such industry of any such feedstock, element, or compound has required expenditures for remedial action under this part, the Administrator may, after such three year period, impose a fee under this section with respect to such feedstocks, elements, or compounds used by such industry. The amount of such fee so imposed shall bear the same ratio to the total fees imposed under this section as the expenditures for remedial action under this part resulting from the use by the fertilizer industry of such feedstocks, elements, and compounds bears to the total expenditures for remedial action under this part.

"(b) AMOUNT OF FEE.—(1) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of petrochemical feedstocks shall not exceed the lesser of—

"(A) 0.5 cent per pound of petrochemical feedstock supplied or used, "(B) 2 per centum of the price in the case of petrochemical feedstock when sold at arms length by the supplier,

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $30,000,000,

"(ii) 1982, $45,000,000,

"(iii) 1983, $45,000,000, and

"(iv) 1984, $60,000,000, or

"(D) such amount as is necessary to produce revenues equal to 60 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(2) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of inorganic elements or compounds shall not exceed the lesser of—

"(A) $5 per ton of inorganic elements or compounds supplied or used,

"(B) 2 per centum of the price in the case of inorganic elements or compounds when sold at arms length by the supplier,

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(D) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(3) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the receipt of crude oil shall not exceed the lesser of—

"(A) 3 cents per barrel of crude oil received,

"(B) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(C) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(4) In order to provide an economic incentive for the recycling and reuse of any feedstock, element, or compound referred to in subsection (a)(1) (A) or (B), the Administrator may reduce the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound in proportion to the extent that he determines any portion of that feedstock, element, or compound to be—

"(A) removed from the waste stream of a production process and recycled in such production process, reintroduced into products, or used as a source of energy, or

"(B) derived from recycled material.

No reduction under this paragraph with respect to any feedstock, element, or compound may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound.

"(c) COLLECTION OF FEES.—(1) The time and manner of payment of the fee shall be specified, the reporting and submission of information necessary to collect the fee shall be required, and the collection of the fees shall be carried out, by such department or agency of the United States as the President shall designate in such manner as such department or agency shall, by rule, establish.

"(2) Any person required to pay any fee or comply with any other requirement imposed under regulations promulgated under subsection (a) who fails or refuses to pay such fee, together with interest thereon (at prevailing rates as determined by the Secretary of the Treasury) in accordance with regulations under this section shall, in addition to liability for any such fee, pay a civil penalty of $2,000 for each day during which such failure or refusal continues.

"(d) JUDICIAL REVIEW OF FEE REGULATIONS.— No regulation of the Administrator imposing any fee under this section, and no modification of any such regulation, may be stayed by any court pending completion of judicial proceedings for the review of such regulation or modification.

"(e) EFFECTIVE DATE.—The fees imposed under regulations pursuant to this section shall apply to—

"(1) petrochemical feedstocks and inorganic elements and compounds, supplied or used,

"(2) crude oil received

on or after October 1, 1980, and prior to October 1, 1984.

"(f) REPORT.—The Administrator, in consultation with the Secretary of the Treasury and other appropriate Federal departments, agencies, and instrumentalities, and with representatives of affected industries, and after providing adequate notice and opportunity for public comment, shall devise a fee schedule based upon the disposal or generation of hazardous waste. Such schedule shall, to the maximum extent practicable, be based upon—

"(1) the degree of hazard to public health and the environment posed by the various categories of hazardous wastes; and

"(2) the risk of harm to public health and the environment posed by such wastes so as to accurately and equitably reflect the costs of such risks in the production stream from which such waste is generated;

and shall minimize administrative, regulatory, and reporting burdens by relying on existing or readily obtainable information. Within one year from the date of the enactment of this subsection, the Administrator shall submit to the appropriate committees of Congress a preliminary report identifying the issues involved in carrying out this subsection. Within two years after such date of enactment, the Administrator shall submit to such committees a final report setting forth the fee schedule devised pursuant to this subsection. There is authorized to be appropriated to carry out this subsection not more than $2,000,000 to remain available until expended.

"Subpart E—Enforcement

"ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of a release or threatened release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release or threatened release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"(b) Criminal Penalty.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who willfully violates section 3033 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Liability for Hazardous Waste Release

"LIABILITY FOR RELEASES

"SEC. 3071. (a) LIABILITY.—(1) Except for a release, or threatened release, of hazardous waste which the defendant establishes to be caused solely by—

"(A) an act of God or an act of war,

"(B) negligence on the part of the Government of the United States,

"(C) an act or omission of a third party other than (i) an employee or agent of the defendant, or (ii) a person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, or

"(D) any combination of the foregoing

where any release, or threatened release, of hazardous waste into the environment from or at an inactive hazardous waste site causes any costs described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (3), such liability shall be joint and several with any other person who caused or contributed to such release.

"(2) For purposes of paragraph (1)(C) a defendant (including any person involved in the generation, transportation, treatment, storage, or disposal of hazardous waste) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of the third party and that he exercised due care in light of all relevant facts and circumstances.

"(3)(A) If a generator or transporter of hazardous waste establishes by a preponderance of the evidence that only a portion of the total costs described in subsection (b) are attributable to hazardous waste generated or transported by him, such generator or transporter shall be liable under this subsection only for such portion. If the owner or operator of any inactive hazardous waste site establishes by a preponderance of the evidence that only a portion of the total costs described in subsection (b) are attributable to hazardous waste which was treated, stored, or disposed of in a period during which he owned or operated the site, such owner or operator shall be liable under this section only for such portion.

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the liability among the parties where deemed appropriate based upon evidence presented by the parties as to their contribution. In apportioning liability under this subparagraph, the court may consider among other factors, the following:

"(i) the ability of the parties to demonstrate that their contribution to a discharge, release, or disposal of a hazardous waste can be distinguished;

"(ii) the amount of hazardous waste involved;

"(iii) the degree of toxicity of the hazardous waste involved;

"(iv) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste;

"(v) the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous waste;

"(vi) the degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment.

"(C) Following any apportionment under subparagraph (A) no person shall be required to pay in excess of his apportioned share of the total costs described in subsection (b).

"(b) COSTS.—The costs for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste are the costs of any removal, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c)) and any costs incurred by a State or local government with respect to such release.

"(c) TO WHOM LIABLE.—The liability for costs described in subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c), the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in subsection (b), shall bring an action under this section for the recovery of such costs against the person liable promptly following his determination of the amount of any such costs.

"(d) LIABILITY UNDER OTHER AUTHORITY OF LAW.—Nothing in this section shall affect the liability of any person under any other authority of law for any release, or threatened release, of hazardous waste, except that the amount recovered by such person under any other authority of law for any costs to which this section applies shall reduce the amount which such person may recover under this section for such costs.

"(e) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability of any other person, including a guarantor, by reason of subrogation, indemnification agreement or otherwise, to a person held liable under this section.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—Hazardous Waste Response Authority

"Sec. 3041. Emergency response.
"Sec. 3042. National Hazardous Waste Response Plan.
"Sec. 3043. State contribution.

"Subpart D—Hazardous Waste Response Fund

"Sec. 3051. Establishment of Fund.
"Sec. 3052. Fees.

"Subpart E—Prohibitions and Enforcement

"Sec. 3061. Enforcement.

"Subpart F—Liability for Hazardous Waste Release

"Sec. 3071. Liability for releases.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 5. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $1,000,000 to carry out the study required under this section.

STUDY OF ADEQUACY OF FUNDING

SEC. 6. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or the environment, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act;

(4) whether the fees, appropriations, and penalties established under the amendments made by this Act are sufficient and equitable; and

(5) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, fees, State participation, liability and liability limits, and financial responsibility provisions.

SUNSET PROVISIONS

SEC. 7. Unless reauthorized by Congress, the authority of the Administrator to assess and collect fees, to inventory and clean up or to order any action regarding an inactive hazardous waste disposal site, or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

LIMITATION ON AUTHORIZATIONS

SEC. 8. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

TITLE II—HAZARDOUS WASTE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Waste Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 211. IMPOSITION OF TAXES.

(a) General Rule.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"Subchapter A. Tax on petroleum.
"Subchapter B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

(a) General Rule.—There is hereby imposed a tax of 0.6 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) Tax on Certain Uses and Exportation.—

"(1) In general.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a), then a tax of 0.6 cents a barrel is hereby imposed on such crude oil.

"(2) Exception for use on premises where produced.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) Persons Liable for Tax.—

"(1) Crude oil received at refinery.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) Imported petroleum product.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) Tax on certain uses or exports.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions.—For purposes of this subchapter—

"(1) Crude oil.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $2.54 a ton in the case of specified petrochemical feedstocks, or

"(2) $2.33 a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2)(A) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term 'specified petrochemical feedstock' means any of the following substances from whatever source derived: Ethylene, propylene, butylene, butadiene, butane, benzene, toluene, xylene, napthalene, and methane.

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic and the equivalent weight of arsenic trioxide;

"(B) cadmium;

"(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

"(D) lead and the equivalent weight of lead in lead oxide;

"(E) mercury;

"(F) the equivalent weight of barium in barium sulfide;

"(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

"(H) cobalt;

"(I) nickel;

"(J) the equivalent weight of tin in stannic chloride and stannous chloride;

"(K) chlorine;

"(L) the equivalent weight of fluorine in hydrofluoric acid;

"(M) bromine;

"(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

"(O) elemental phosphorus.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTION FOR USE IN PRODUCTION OF FERTILIZER.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance—

"(A) used in a qualified use by the manufacturer, producer, or importer,

"(B) sold for use by the purchaser in a qualified use, or

"(C) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(2) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) REGISTRATION.—The provisions of section 4222 (relating to registration) may be extended to, and made applicable with respect to, the exemption provided by paragraph (1) to the extent provided by regulations prescribed by the Secretary.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4661 in the same manner as if such chemical were sold by him.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4661 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of—

"(A) any other substance the sale of which by such person would be taxable under such section, or

"(B) a fertilizer,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which paragraph (2)(A) applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"Chapter 38. Environmental taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS WASTE RESPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Waste Response Trust Fund" (hereinafter in this subtitle referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, PENALTIES, ETC.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered by the United States under subpart F of part 2 of subtitle C of the Solid Waste Disposal Act,

(C) any amount reimbursed to the Trust Fund as provided in subsection (a)(3) of section 3041 of the Solid Waste Disposal Act, and

(D) any penalties assessed under part 2 of subtitle C of the Solid Waste Disposal Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Trust Fund for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $75,000,000,

(C) 1983, $75,000,000,

(D) 1984, $100,000,000, and

(E) 1985, an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Trust Fund shall be available, to the extent provided in appropriations Acts, only for purposes of making expenditures for emergency response, removal, containment, cleanup, and other action taken under subpart C of part 2 of subtitle C of the Solid Waste Disposal Act (including reimbursement of excess costs pursuant to section 3041(c) of such Act) as in effect on the date of the enactment of this Act. No amount in the Trust Fund may be used to pay any part of the costs referred to in the preceding sentence which are incurred with

respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

(2) LIMITATION ON AMOUNT EXPENDED OUT OF TRUST FUND FOR ANY FISCAL YEAR.—The amount expended out of the Trust Fund for any fiscal year shall not exceed 10 times the amount appropriated to the Trust Fund for such fiscal year under the authority contained in subsection (b)(2).

(d) TERMINATION.—No amount may be paid out of the Trust Fund after September 30, 1985.

SEC. 222. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during such fiscal year

and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

(c) NO AUTHORITY TO BORROW.—Nothing in any provision of law shall be construed to authorize the Trust Fund to borrow any money from the general fund of the Treasury or from any other fund established in the Treasury.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 231. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of the Trust Fund created by this title, or

(3) the levy or collection of any fee.

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title, any reference to a fund in this Act (or in any amendment made by this Act) other than this title shall be deemed to be a reference to the Hazardous Waste Response Trust Fund established by this title.

Subtitle D—Study

SEC. 241. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study on—

(1) the feasibility and desirability of—

(A) a schedule of taxes—

(i) which is based on the disposal or generation of hazardous waste, and

(ii) which would reflect the degree of hazard and risk of harm to the public health and the environment posed by the various hazardous wastes,

(B) taxes imposed on substances not taxed by the amendments made by this title such as coal and biomass, and

(C) taxes which are designed to promote the recycling, incineration, and neutralization of hazardous waste,

(2) an exemption from the taxes imposed by section 4661 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) the impact of the taxes imposed by sections 4611 and 4661 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Passed the House of Representatives September 23, 1980.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

CHAPTER IV

H.R. 85

[From the Congressional Record, Jan. 15, 1979, pp. E43-E46]

FLOOR STATEMENT OF THE HONORABLE MARIO BIAGGI, CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION, UPON INTRODUCTION OF A BILL ON OIL POLLUTION LIABILITY AND COMPENSATION

● Mr. BIAGGI. Mr. Speaker, I am introducing today a bill to provide a comprehensive system of liability and compensation for damage caused by oil pollution—and for removal costs. As you no doubt are aware, this has become necessary due to the failure of the Senate to act on the extensive work we completed here in the House on September 12, 1977, during the 95th Congress, when we passed H.R. 6803.

This legislative initiative actually had its inception over 10 years ago when the tank vessel *Torrey Canyon* grounded off the southwest coast of England in 1967. In that incident, approximately 100,000 tons of crude oil were spilled into the ocean and ultimately fouled the shores of the British Isles and the coast of France.

The oil pollution problem was again highlighted in 1969 when a production platform off Santa Barbara, Calif., suffered a blowout which lasted for many days and discharged considerable amounts of oil before it could be brought under control.

Since then, numerous other casualities have highlighted the oil pollution problem and the need for a national comprehensive oil spill liability and compensation scheme.

While existing oil pollution legislation permits compensation for cleanup and removal cost, there is no legislation which adequately and timely compensates those who have been victimized.

One particular casualty, the grounding of the very-large crude carrier, *Amoco Cadiz,* of 228,513 deadweight tons, off the coast of France on March 16, 1978 is the most recent and most memorable reminder of the need to establish such a system as soon as possible. It is absolutely necessary to provide for adequate compensation to those parties who suffer damage from the effect of oil pollution incidents occurring along our coasts and in the waters of the United States.

Prevention of oil spills is still considered to be the most effective means of protecting our coastal and estuarine environment from damage. The Port and Tanker Safety Act of 1978—which I was privileged to sponsor and pursue during the 95th Congress—should be very effective in this area of prevention. However, we cannot preclude the possibility of oil spills occurring due to mechanical failures and the carelessness of individuals.

In the United States, the public's concern has led to the enactment of a number of measures to improve the quality of our waters and control pollution. The Water Quality Improvement Act of 1970—which was subsequently amended by the Federal Water Pollution Control Act Amendments of 1972—and most recently amended by the Clean Water Act of 1977—declared, as a national policy, that there should be no discharges of oil into or upon our waters. In addition to numerous specific measures for the protection of the marine environment, they established liability on the part of spillers for the costs of cleanup. These acts, however, do not address themselves to the question of any damages other than for the costs of cleanup.

Three other Federal statutes have been enacted which do address the problems of liability for damages. In the Trans-Alaska Pipeline Authorization Act, the Congress in 1973—for the first time—addressed in Federal statute the issue of liability for damages other than cleanup costs. We created a compensation fund available to respond to damage caused by oil pollution from vessels moving TAP's oil to ports in the continental United States.

A similar scheme of liability and compensation was also established in the Deepwater Port Act of 1974 for oil pollution damage from offshore facilities constructed pursuant to the act or from vessels at those facilities.

Recently, the Congress—in enacting the Outer Continental Shelf Lands Act Amendments of 1978, during the last days of the 95th Congress—established a similar liability and compensation scheme for oil pollution damage related to ICS activities.

The Coast Guard has already proposed enabling regulations for the establishment of a federally administered Outer Continental Shelf Fund to provide compensation for losses which are not otherwise compensated. These regulations detail requirements for the establishment of financial responsibility, settlement and adjudication of claims, notification of oil pollution incidents, designation of pollution sources, and many other related provisions.

These measures are necessary to insure that funds are available to pay for the prompt removal of any oil spilled or discharged as a result of OCS activities—and to compensate for any damage to public and private interests caused by such spills or discharges when, for whatever reason, payment is not made by those responsible for the source of the oil pollution.

While this offshore fund legislation focuses on oil pollution incidents arising in connection with OCS activities, it contains parallel provisions to the House-passed bill, H.R. 6803, which was not acted upon by the Senate during the latter part of the 95th Congress.

The bill I am introducing today likewise parallels these provisions and will expand the scope of coverage to include virtually all marine oil pollution from vessels and from onshore facilities. My proposal, which has been generally referred to as super fund legislation, would continue the imposition of strict liability on persons responsible for an oil spill—while creating a domestic compensation fund that would be available to settle claims in excess of a spiller's liability.

The concepts of super fund have had broad support from the users of oil—from the oil industry itself—from the insurance industry, who does the underwriting—and from many environmental groups. The passage of H.R. 6803 by the House during the last Congress—by a recorded vote of 332 to 59—is a significant attestation of support.

The bill I am introducing today should continue to receive overwhelming bipartisan support. The bill:

Establishes strict liability for the owners and operators of the source of oil discharges [Sec. 107];

Creates a backup compensation fund to respond to damage claims which are not satisfied [Sec. 221];

Provides for maintaining the fund at a level of between $150 and $200 million by the collection of a fee—not to exceed 3 cents per barrel of oil received—from the owners of the oil [Sec. 211];

Provides for superseding duplicative funds and procedures which now exist in various Federal and State statutes [Sec. 304];

Provides for evidence of financial responsibility sufficient to satisfy the maximum amount of liability [Sec. 108]; and

Provides a simple and workable claims settlement procedure [Sec. 112].

I reiterate my prior conviction that this bill is practicable in application—and fully considers the needs of those who have been victimized by oil pollution. I firmly believe that we must act now in the public interest and provide a comprehensive oil pollution liability and compensation scheme—the often referred to super fund.

One might ask "why has this legislative initiative—if it has broad support—met strenuous opposition by our colleagues in the Senate?" Before commenting, I might note that only a limited number of our colleagues and their staffers in the Senate have voiced opposition—but those few have been successful in preventing enactment of this important legislation in the last two Congresses.

Prior to discussing the issues which prevented enactment, I would like to discuss the study by the attorney general on the methods and procedures for implementing a uniform law providing liability for cleanup costs and damages caused by oil spills from ocean-related sources. This study was reported to the Congress on July 3, 1975.

As many of you might recollect, during Congress' consideration of the Deepwater Port Act of 1974 (Public Law 93-627, enacted on January 3, 1975), the weaknesses in oil spill liability and compensation laws became indisputedly evident. The Senate, in particular, adopted a provision which required that "the study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible."

I believe that the Attorney General's study and his report have served as valuable background to the intricate legal problems associated with oil pollution liability and compensation. I further believe that the bill we passed in the last Congress and the bill I am introducing today have consideed or adopted all of the recommendations in the report.

One of the major issues which received and continues to receive considerable attention is the question of preemption of State laws [Sec. 114].

It has been claimed that, by permitting the States to establish liability schemes and other requirements as they see fit, the States—on an individual basis—can develop such strict requirements that the owners and operators of all modes of transportation—that is, vessel, truck, train, and pipeline—and the owners and operators of storage, transfer, and processing facilities will exercise such extreme care and diligence that there will be no oil pollution. This is simply not true. This is what I call emotional reasoning, completely without foundation, in fact.

The simple fact is that in any business or industrial activity there is a recognized potential for damage with attendant liability. Even the homeowner or renter recognizes that he can cause damage to a visiting guest and can be made liable for those damages.

The issue of liability touches all of us in our day-to-day activities, and we protect ourselves by obtaining the necessary insurance. The transportation industry—the oil industry—any industry, like the homeowner or renter, protects itself with insurance.

No matter what liability limits are established—and no matter who, State or Federal, establishes them, the end line is insurability. For example, if a vessel operator cannot obtain insurance, then there will be no vessels carrying the needed oil. The same can be said for the other modes of transportation. A case in point is the history of the oil pollution liability law in the State of Florida.

While the Supreme Court upheld some provisions of that law, the inability to insure to meet these provisions—and the resultant loss of vessel transportation of oil—created a serious oil distribution problem that was only remedied when these provisions were not enforced. As a matter of fact, they were eventually brought in parallel with existing Federal law, where they remain today.

It is also argued that the States should have the right to maintain their own funds—to charge their own fees—and to provide for the payment of any economic or natural resources damages they see fit.

No one argues with this right, and no one wants to see an erosion of State power. However, one must think of the consuming public—the ones who will, in the end, pay for whatever liability and compensation scheme or schemes are developed.

A patchwork of oil spill liability and compensation laws on the Federal and State levels can only create excessive bureaucracies and a quilt of paperwork which would stretch beyond the imagination.

How can the various affected industries and transportation modes be able to cope with 50 or more liability and compensation schemes and funds which I am sure are going to be varied and complex? The burden we are imposing—if we do not preempt State laws in this field—will only create a greater burden on you and I—the paying consumer. I sympathize with those who advocate State's rights, but I have considerably more sympathy for the paying consumer.

I believe we must ask ourselves, "What do we really want and how can that best be achieved?"

First, we must consider what damage should be made compensable.

Second, we must examine the limit of liability we want to impose.

Third, we want to make sure that, no matter what the damage is, there will be funds available for compensation.

Fourth, although we want the oil industry to pay for the creation of a fund, it must be recognized that the user of oil—the consumer—in the end will be paying through increased cost of the product.

I believe my bill provides for a simple and practicable system for the compensation of a broad range of oil pollution damage [Sec. 107]. It also imposes reasonable and insurable limits of liability on the owner or operator of the particular transportation mode or facility—thereby making him the front-line payer in most instances, and insuring front-line responsibility for responding to an oil pollution incident.

In those cases wherein damage claims are not satisfied, there is a compensation fund of up to $200 million available as a backup. The creation of the super fund will be through the imposition of a fee on oil received which should be adequate to meet all anticipated contingencies. Further, once the fund reaches its limit, the interest alone should generate sufficient capital—thereby reducing or eliminating the fee and, in turn, removing another burden from the consumer **[Secs. 211, 221, and 223(b)]**.

Another issue is the one of hazardous substances **[Sec. 101(14)]**. There is no denying that hazardous substances threaten the public and the environment. However, the issues of hazardous substance pollution enforcement, liability, and compensation are highly complex and contain a number of problems which are not found in the development of an effective oil pollution enforcement, liability, and compensation program.

Despite passage of the Federal Water Pollution Control Act Amendments in 1972, this Nation has not had an effective hazardous substance program—even though the legislation we developed in 1972 was well-intended. It does absolutely no good to enact requirements which can not be enforced due to technical unfeasibility and impracticability.

To highlight the problem of enforcement for hazardous substance pollution—and without considering the issues of liability and compensation—it is history that the Environmental Protection Agency has not, until very recently been able to even agree on a list of hazardous substances.

Once the list was published and enforcement began, the courts enjoined the enforcement actions as being patently arbitrary and capricious. A "quick fix" to the Federal Water Pollution Control Act in the waning days of the 95th Congress might permit an effective enforcement program; however, this is yet to be proven.

Hazardous substances is not only a subject unto itself—separate and apart from oil pollution—but is also full of complex subdivisions and degrees of hazard within themselves. Certainly, it can be agreed that the probability and extent of damage that can be created by—say, certain acids—is completely different than the probability and extent of damage that can be created by chlorine gas and, again, different from liquefied natural gas. Even within the compressed gas field itself there are differences in probability of damage between certain related gases.

In addition, it is my understanding that the administration has established a task force to study the numerous issues related to hazardous substances liability and compensation—and that the same issues are also the subject of extensive conferences in the international maritime community through the Inter-Governmental Maritime Consultative Organization.

In summation, I believe the hazardous substance problem is a separate and highly complex one that should be handled by separate legislation after everyone has been given an opportunity to be heard. This would permit the establishment of a fair and equitable hazardous substances liability and compensation scheme—coupled with an aggressive and effective enforcement program.

I had hoped that, during the last Congress, we could have put oil pollution liability and compensation to rest—and then, during the 96th Congress, we could have concentrated on hazardous substances legislation. This has not been the case. However, I once again promise my wholehearted cooperation in addressing this problem as soon as the oil pollution super fund legislation is passed by the Congress.

A third issue which has had extensive review is the limit of liability problem [Sec. 107]. During the 95th Congress, the hearings on H.R. 6803 and the attendant report clearly documented the rationale for certain limits of liability.

The bill provides that, in the preponderance of incidents, the source of the pollution will be liable for all claims. In those cases where the pollution is extensive, the source of the pollution will be held liable for all claims up to reasonable and insurable limits, while the owner of the oil carries the burden for claims exceeding those limits by contributing to the fund. Thus, the cost of oil pollution is spread between the owner or operator of the transportation mode or facility from which oil enters the environment—and the owner of the oil which creates the pollution risk.

Ultimately, of course, as I have previously stated, the cost is reflected in large measure in the cost of the product—and is therefore borne by the user of the oil, the consumer.

Different limitations of liability are necessary due to the many varied modes of transportation and facilities. With respect to different limits of liability for various types of vessels, it is readily apparent that a general cargo freighter—carrying only oil bunkers for the vessel's operation—does not present as great a risk of oil pollution as a tank vessel that not only has bunkers on board but also carries a cargo of oil.

The same rationale is applicable to tank barges, which often carry considerably less than a self-propelled tank vessel. However, it must be remembered that limitations of liability do not reduce the amount of funds available for payment of damages, since the fund—which is supported by all oil owners—is available to pay any additional amounts above the limitations.

During the last Congress, there was considerable discussion within both the Subcommittee on Coast Guard and Navigation and the Committee on Merchant Marine and Fisheries on a maximum ceiling of liability for tank vessels. There was eventual agreement on a maximum level of $30 million, because this was reported as being the so-called insurable limit, the limit of coverage that could be provided by the international insurance market.

A fourth issue which I have reviewed and reconsidered is the many purposes which have been advocated for the use of the fund [Sec. 111]. I still believe that the fund should be established for limited purposes—and should provide an immediate source of available funds for cleanup and should assure reasonable and expeditious compensation to the damaged party.

I do not believe the fund we are establishing should be available for the payment of costs which are of a capital or research nature—and which are normally subject to authorization and appropriation processes.

A fifth issue of a somewhat lesser concern has been the method and procedure for processing claims and the related administration of the fund [Sec. 112]. The bill is designed to provide for minimal governmental interference—with strong incentives for prompt and equitable settlement using detailed statutory provisions.

I believe that many of these procedures are so important in creating substantial incentives to settle damage claims that they cannot be left to the imagination of the administration through regulatory and rulemaking procedures.

Further, many of these requirements—such as types of claims payable; types of investigative, court, or attorney fees; and the availability of interest charges—are so substantive that we might create a vacuum if they were not included in the bill.

The objectives of my oil spill liability and compensation legislation are to:

Establish one fund at the Federal level that will provide ample money for prompt compensation of oil spill damage;

Establish one set of oil spill liability laws for the entire Nation, covering all types of oil spills from all sources;

Remove the overlaps and bare spots of the present patchwork system; and

Minimize the bureaucracy.

This, in turn, will benefit the one who has been victimized as well as the one who will pay for this compensation—the ultimate consumer of oil.

I, therefore, am introducing legislation similar to H.R. 6803, which was passed by the House during the last Congress, for reconsideration by this Congress.●

96th CONGRESS
1st Session

H. R. 85

To provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 15, 1979

Mr. Biaggi (for himself, Mr. Murphy of New York, Mr. Treen, Mr. Snyder, Mr. Jones of North Carolina, Mr. Pritchard, Mr. de la Garza, Mr. Young of Alaska, Mr. Patterson, Mr. Bauman, Mr. Ginn, Mr. Lent, Mr. Hubbard, Mr. Evans of Delaware, Mr. Bonker, Mr. Forsythe, Mr. D'Amours, Mr. Emery, Mr. Oberstar, Mr. Dornan, Mr. Hughes, Mr. Trible, Ms. Mikulski, Mr. Bonior, Mr. Akaka, Mr. Bowen, and Mr. Zeferetti) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation

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A BILL

To provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

I—E

TITLE I—DOMESTIC OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 102;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel which is certificated to operate outside the internal waters of the United States;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, other than an offshore facility, located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or their connecting or tributary waters within the United States, or on land or waters within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

(o) "navigable waters" means those waters of the United States (including the territorial sea) the general character of which is navigable and which, either by themselves or by uniting with other waters, form a continuous waterway on which vessels may navigate or travel between two or more States or to or from any foreign nation;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "person in charge" means the individual immediately responsible for the operation of a vessel or facility;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who, without participating in the management or operation of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(z) "property" means littoral, riparian, or marine property;

(aa) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(bb) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(cc) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway;

(dd) "gross ton" means a unit of measurement of one hundred cubic feet to the ton for the purpose of measuring the total internal volume of a vessel;

(ee) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit; and

(ff) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Spill Liability Fund. The amount of the fund may not exceed $200,000,000, except to the extent necessary to permit payment into the fund of moneys recovered or collected under subsections (b) (2) and (3) of this section. The fund shall be administered by the Secretary and the Secretary of the Treasury, as specified in this section. The fund may sue and be sued in its own name.

(b) The fund is constituted from—

(1) all fees collected pursuant to subsection (d);

(2) all moneys recovered on behalf of the fund under section 108;

(3) all other moneys recovered or collected on behalf of the fund, under this title.

(c) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay removal costs defined in section 101(aa)(1). The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

(d)(1) Subject to the provisions of section 202(b), the Secretary of the Treasury shall collect from each refinery owner, and from the owner of each terminal receiving oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of oil received. Oil upon which a fee has been levied under this paragraph shall not be subject to subsequent levy hereunder. The person who owns such oil shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the full amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal.

(2) The Secretary of the Treasury, after consulting with the Secretary, shall, by regulation, establish the amount of the fee to be collected and procedures relating to the collection of the fee. No amendment to these regulations may become effective less than ninety days after publication of the amendment in the Federal Register. Any change in the amount of the fee shall be designed to insure that the fund is maintained at a level not less than $150,000,000 and not more than $200,000,000. No regulation that changes fees, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation. No changed fees paid by any owner of a refinery or a terminal pending completion of judicial review of the changed fee regulation

shall be repaid to such owner notwithstanding the final judicial determination.

(3)(A) Any person who fails to collect or pay fees as required by this section and the regulations issued under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected under paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States

shall have access to such required material for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the fund.

(2) The Secretary of the Treasury may invest any excess in the fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and under regulations issued by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and form a part of the fund.

(f) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of theses notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States.

(g) The Comptroller General shall audit all payments, obligations, reimbursements, or other uses of the fund, to assure that the fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the fund and a final report two years after the establishment of the fund. The Comptroller General shall thereafter audit the fund as appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, discovered on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) loss of use of real or personal property;

(4) injury to, or destruction of, natural resources;

(5) loss of use of natural resources;

(6) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim

may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under items 2, 3, and 5, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 4, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 6, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under item 7, by any State or political subdivision thereof;

(6) under items 2 through 7, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however,* That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline

Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(7) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

(d) If the number of members of a class in an action brought under subsection (b)(7) or subsection (c) exceeds one thousand, publication of notice of such action in local newspapers of general circulation in the areas in which the damaged persons reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(aa)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitations of liability for facilities subject to clauses (4) and (5) of subsection (b), if he determines that those limitations will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact. Any such reduction in limitation of liability shall be made as follows:

(1) the limitation of liability for facilities subject to clause (4) may be reduced to not less than $35,000,000; and

(2) the limitation of liability for facilities subject to clause (5) may be reduced to the total of all removal costs plus an amount of not less than $35,000,000.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under classes (3) of subsection (b), taking into account the relative potential threat of oil pollution.

(e) There shall be no liability under subsection (a)—

(1) where the incident is caused primarily—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under section 103, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(aa), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons, which uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b) The owner or operator of a facility that (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability, in accordance with section 104 of this title, or $50,000,000, whichever is less.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

SEC. 106. (a) The person in charge of a vessel or facility that is involved in an incident shall immediately notify the Secretary of the incident, as soon as he has knowledge thereof. Notification received under this subsection or information obtained by the exploitation of such notification shall not be used against any such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

(b)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(c) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(d) Advertisement under subsection (b) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106 (c), or

(2) where the owner or operator may recover under section 103(b) (1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) adver-

tising was commenced pursuant to section 106(b) (2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsection (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(c), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the

contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or

to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5,

United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 107 (c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subjection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a)(1) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed

$10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(3) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

(b) Any person in charge who fails to give the notification required by section 106(a) shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

STUDIES

SEC. 112. The President shall conduct a study to determine whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities subject to liability under section 104, and whether the market for insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, co-insurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, to the Congress within one year after enactment of this Act, and shall submit an interim report on his study within three months of the date of enactment of this Act.

APPROPRIATIONS

SEC. 113. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 112.

(b) The Secretary may incur indebtedness on behalf of the United States, as provided in section 102(f), to the extent provided in appropriation Acts for that purpose.

ANNUAL REPORT

SEC. 114. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of the fund during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of the fund and the administration of the liability provisions of this title.

TITLE II—EFFECTIVE DATES; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, that the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Spill Liability Fund established by section 102 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made. If the Secretary finds that—

(A) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to paragraph (4) of this subsection, the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 102(d) of this Act on barrels of oil, and the Secretary may waive such fee until such time as the total amount of the fees so waived equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified; or

(B) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary shall increase by 2 cents per barrel the fee imposed under section 102(d) on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(3) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(4) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under

paragraph (2) of this subsection for the collection or payment of fees established under section 102(d) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. The owner shall pay to the State of Alaska during such time as the collection or payment of fees under section 102(d) of this Act is waived.

(5) For purposes of paragraphs (2) and (3)—

(A) the term "barrels of oil" means only barrels of oil which would, but for the repeal made by paragraph (1), be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act;

(B) the term "Secretary" means the Secretary of the Treasury.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution, taken under section 5 of this Act, and the revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (16) with a semicolon and adding a new clause (17) to read as follows:

"(17) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate,".

(5) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of this section.".

(6) Paragraph (5) of subsection (b) and subsections (f), (g), (h), (i), and (o) are amended by inserting after the word "oil" wherever it appears the words "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(7) Subsection (f) is further amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against the person furnishing financial responsibility under section

105 of the Comprehensive Oil Pollution Liability and Compensation Act,".

(8) Subsection (g) is further amended, by inserting in the last sentence, after the word "party" the words "or against the person providing financial responsibility for that party under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act,".

(9) Subsection (k) is amended to read as follows:

"(k) There is authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section respecting such discharges shall also be deposited in this fund for these purposes. All sums appropriated to, or deposited in, the fund shall remain available until expended.".

(10) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom).".

(11) Subsection (p) is repealed, and subsections (q) and (r) are redesignated subsections (p) and (q), respectively.

(e) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(l) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(f) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed.

SEC. 203. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96-172
1st Session } { Part 1

OIL POLLUTION LIABILITY AND COMPENSATION ACT

MAY 15, 1979.—Ordered to be printed

Mr. MURPHY of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 85, which on January 15, 1979, was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

[See H.R. 85, as reported, p. 691.]

BACKGROUND

This is the third Congress in which there has been an attempt to enact a uniform law to provide a comprehensive system of liability and compensation for damage caused by oil pollution. While existing laws permit compensation for cleanup and removal costs, there is no comprehensive legislation in place that adequately and timely compensates those who are victimized by oil pollution.

This problem has been recognized for a number of years and was highlighted in 1967 when the Liberian tanker *Torrey Canyon* grounded off the southwest coast of England, and again in 1969 when a production platform off Santa Barbara, California blew out—both events causing extensive oil pollution damage. In the *Torrey Canyon* incident, approximately 29 million gallons of crude oil were spilled into the ocean, and most of it found its way to the shores of the British Isles and the coast of France. While damages were difficult to compute, approximately $15,000,000 was spent on cleanup and $25,000,000 in claims were asserted, which were ultimately settled for about $7,000,000.

Since these two incidents, numerous other casualties have demonstrated the need for a national and comprehensive oil spill liability and compensation scheme. The two most recent casualties, one of which occurred within our 200-mile fishery management and conservation zone, are also worthy of mention.

While the *Argo Merchant* grounding in December of 1976, twenty-seven miles southeast of Nantucket Island, did not result in shoreside oil pollution damage, it did highlight the overall lack of protection from oil spills. This vessel was carrying approximately 8.5 million gallons of #2 fuel oil that was ultimately lost to the sea. The expense to the United States to monitor this disaster and to prevent pollution from it was almost $2 million. Fortunately, no private parties were damaged, and the Coast Guard was able to collect most of its expenses from a fund maintained by participating oil companies.

The other casualty, the grounding of the very large crude carrier *Amoco Cadiz* off the coast of France on March 16, 1978, is the most recent and most memorable reminder of the need to do something as soon as possible. In comparison to the *Argo Merchant*, the *Amoco Cadiz* was carrying approximately 67 million gallons of crude oil, or nearly eight times as much as the *Argo Merchant*. This was ultimately lost to the sea or found its way ashore to do extensive damage to real property, personal property, and natural resources. The estimates of total claims that are being made as a result of the oil pollution damage vary considerably, but all estimates are over $1 billion. The amount of money available to settle these claims is $30 million under international law and a voluntary funding arrangement among oil companies.

Since it is obvious that this nation will continue to require extensive amounts of petroleum and petroleum products for the foreseeable future, the problems associated with its use, including oil pollution, will remain with us. The use of oil in the United States goes back for more than a hundred years and has contributed in a major way to the tremendous growth of our economy. During the present century, its use has increased to the point where we are now importing more than eight million barrels of crude oil per day, or more than a quarter of the total crude oil moving in worldwide trade. Oil from our domestic and Outer Continental Shelf resources adds about another eleven million barrels of crude oil moving each day.

While the prevention of oil spills is still the most effective means of protecting our coastal and estuarine environment from damage, we cannot preclude the possibility of oil spills occurring due to mechanical failures or the errors of individuals. With such a large volume of petroleum and petroleum products moving within our nation, this possibility will remain with us for a number of years. Last year, the Congress acted in the area of prevention by enacting landmark legislation in the form of the Port and Tanker Safety Act of 1978, P.L. 95-474. What remains to be done is to facilitate cleanup and to provide for the damaged party, the one who has been innocently victimized by oil pollution.

At the present time, liability and its related compensation schemes for oil pollution damage constitute a patchwork quilt of Federal and State laws, international conventions, and private voluntary industry agreements. With respect to vessels, one of the principal theories relied upon to recover damages for pollution is negligence. However, use of this theory is not only burdensome and costly to the claimant, but presents difficulties in proving the existence of the legal or proximate cause of damage—if and when a court obtains jurisdiction over the vessel, its owner, or its operator.

Claimants face the further difficulty of overcoming the limitation of liability provisions for vessels under the Limitation of Liability Act of 1851, 46 U.S.C. 181-189, wherein recovery can be limited to the value of the vessel and the freight pending after the accident or incident. In the case of the *Torrey Canyon*, this value was set at fifty dollars, the value of a remaining ship's lifeboat. Other common law remedies for recovery, such as trespass and nuisance, are also inadequate to compensate victims of oil pollution in a fair and expeditious manner.

While recovery for oil pollution damage from facilities is not subject to all the difficulties found in the case of vessels, there are many similar problems of proof and the need to undertake litigation with its associated costs. The procedures have often proven to be cumbersome and protracted, all too often providing inadequate compensation. Of course, no relief is available where the damage was caused by an unknown spiller.

In the United States, the public concern has led to the enactment of a number of measures to improve the quality of our water and control pollution. These laws, however, do not address themselves comprehensively to the question of damages other than for the cost of cleanup. The first statute of significance in the area of compensation for damages was the Water Quality Improvement Act of 1970, which directed a study to ascertain measures needed to provide financial responsibility and the payment of damages resulting from discharges of oil. The concerns of Congress with oil pollution were first specifically addressed in the Oil Pollution Act of 1924, which applied solely to vessels and provided penalties for oil spills.

The 1970 Act declared that as a national policy there should be no discharges of oil into or upon the navigable waters of the United States, the adjoining shorelines, or from vessels operating in the contiguous zone. It included a requirement for a national contingency plan for the removal of any oil that might be discharged, and established liability on the part of spillers for the removal costs of any such oil spill. It also established a revolving fund, to be available for Federal cleanup activities, with utimate recovery of costs from the responsible spiller. The Act did not address itself to the question of damages other than cleanup costs.

In subsequent years, three other statutes were enacted that addressed the problem of liability and compensation for damage other than cleanup costs. In the Trans-Alaska Pipeline Authorization Act of 1973 and the Deepwater Port Act of 1974, funds were established to compensate for damage resulting from oil pollution: in the first case, from vesels moving oil from the Trans-Alaska pipeline to ports elsewhere in the United States; and in the second case, from vesels or facilities engaged in deepwater port operations.

In 1978, the Outer Continental Shelf Lands Act (OCSLA) was amended to establish an Offshore Oil Pollution Fund to provide compensation for cleanup costs and damage resulting from an oil spill from an offshore facility on the Outer Continental Shelf and vessels transporting oil from OCS activities. While this offshore fund legislation focuses on oil pollution incidents arising in connection with Outer Continental Shelf activities, it contains provisions parallel to H.R. 6803, which passed the House in September 1977 but failed of enactment in the Senate. Soon after enactment of the OCSLA Amendments, the Coast Guard promulgated regulations for the Federally administered Title III Outer Continental Shelf Fund.

While these statutes provide for liability and compensation in their specific jurisdictional areas, they do not cover all situations. There is a need for a comprehensive oil pollution liability scheme that will provide protection to any person who may be damaged by oil pollution. Such a comprehensive scheme would unify the law in this important area. The pasage of H.R. 6803 by the House during the last Congress, by a recorded vote of 332 to 59, was a significant attestation of support for a comprehensive uniform liability and compensation statute.

Beginning in the early 1970's, various States also began to enact legislation covering damages, in varying degrees, resulting from oil pollution incidents. Now, approximately one-half of the coastal States have statutes on the problem varying widely in their coverage and application. As a result, a patchwork of laws exists in the United States, containing varigated and conflicting provisions relating to oil pollution liability and compensation.

Recognizing that fact, the Congress, in the Deepwater Port Act of 1974, directed the Attorney General to study the matter and make any necessary rcommendations for legislation to provide a single comprehensive system. The Congress stressed that the Attorney General should address possible means of insuring fair, expeditious compensation to the victims of pollution, without imposing an unreasonable financial burden on those segments of the economy that are involved in the necessary activities associated with the production and movement of oil.

The Attorney General completed his study in 1975 and submitted his report to the Congress. In the report, he pointed out that, while he had been directed to consider the problem specifically as it involved ocean-related activities, a study limited to that aspect could not be considered comprehensive in view of the fact that almost one-third of the oil pollution, by volume, occurred in inland waters.

Subsequently, the President forwarded proposed legislation to implement the recommendations contained in the Attorney General's report and provide for a comprehensive system which would cover inland waters as well as ocean-related spills. After extensive hearings and significant amendments, the bill was reported by the Committee on Merchant Marine and Fisheries on September 9, 1976, as H.R. 14862, in House Report 94–1489, Part 1. Because of the proximity to the adjournment of the 94th Congress and the lack of time for further action in the other body, the bill died with the Congressional adjournment.

In the early days of the 95th Congress, a number of bills were introduced on the subject, primarily as the result of the December 1977 *Argo Merchant* grounding and a number of other marine casualties in and around U.S. waters. Hearings held in both Houses of Congress were directed at the whole problem of the carriage of petroleum and petroleum products and the attendant risks and damage. After four days of hearings in February and March of 1977 and two Markup Sessions, H.R. 6803 was reported by the Committee on Merchant Marine and Fisheries on May 6, 1977, in House Report 95–340, Part 1.

The Committee on Public Works and Transportation, to whom the bill had been jointly referred, filed a letter dated June 30, 1977, suggesting amendments but generally concurring with the extensive work of the Merchant Marine and Fisheries Committee and indicating no need to file a Part 2 report.

On September 12, 1977, the House passed H.R. 6803 and, on the same day, the Senate Committee on Comerce, Science, and Transportation reported S. 2083, a similar bill, in Senate Report 95–427. The Senate Subcommittee on Environmental Pollution held three days of hearings in April and May 1978, followed by two days of Markup in August 1978, after the Committee on Merchant Marine and Fisheries expressed a deep concern over the need to take action to permit the enactment of this landmark legislation. On August 25, 1978, a completely revised S. 2083 was reported by the Senate Committee on Environment and Public Works in Senate Report 95–1152.

On October 5, 1978, ten days before the termination of the 95th Congress, the Senate amended H.R. 6803 by deleting all after the enacting clause and substituting the language of S. 2083. On legislative day October 12, 1978 (actually at 12:44 a.m. on October 13th), the House amended H.R. 6803, as amended by the Senate, using the original language and format of H.R. 6803 and making a number of substantive changes to accommodate some Senate concerns. However, on October 14, 1978, the Senate adjourned without taking further action, whereupon the bill died with the Congressional adjournment.

On the State level, there has also been considerable concern and legislative activity with respect to oil pollution; however, very few States have enacted legislation to adequately compensate those who have been victimized by oil pollution. The activities of the States have been primarily concentrated among the coastal States and in the area of pollution prevention, enforcement, cleanup, and containment. Since 1970, most coastal States have enacted their own legislation to address their individual situations, due to the absence of a comprehensive Federal oil spill liability and compensation scheme and due to the lack of broad coverage in existing Federal laws. An account of State activities in this field is provided by the Congressional Research Service Report 79–63 ENR, dated March 9, 1979, and entitled, "Oil Pollution Liability Statutes: An Overview of State Programs."

When the existing Federal and State statutes are examined, confusing and widely differing sets of requirements or programs become apparent. With respect to liability, some States have no specified limits, others have set limits for vessels and facilities that are voided if negligence is proven, others have unlimited liability for terminals only, while others have unlimited cleanup liability but limited damage liability. Only eight States require proof of financial responsibility, with requirements that vary in amount as well as in applicability to vessels or facilities.

Most State laws cover costs for cleanup, but provisions addressing property damage and economic losses are limited in scope. This, coupled with the multitude of and differing types of defenses under various State laws, makes it most difficult to ascertain the scope and degree of applicable liability. In turn, this adversely affects the ability to operate in national and international trade. Another complication adding to the confusion nationwide is the widely varying funding mechanisms adopted by the States. Some States use appropriated funds, others use licensing fees for terminals and facilities but not vessels, others use contributing funds (established by a per barrel fee on oil handled by terminals and vessels), others use civil and criminal penalties collected for violation of State pollution laws, and some States use a combination of two or more of the methods mentioned.

On the international level, as a result of the 1967 *Torrey Canyon* disaster, which pointed dramatically to the overall lack of protection from oil spills and the damages that could be incurred, an international solution was also sought through the Inter-Governmental Maritime Consultative Organization (IMCO). Not only did that organization reach agreement on tighter provisions for the Oil Pollution Convention of 1954 (the implementation of which is contained in the Oil Pollution Act of 1961), but an international conference, meeting in November 1969, elaborated two new Conventions.

One of these Conventions has been ratified by the United States and implemented by the Intervention on the High Seas Act. That Convention recognizes the right of a nation to intervene on the high seas in cases involving the imminent threat of oil pollution to its coastal areas.

The second of the two Conventions addressed itself to liability for oil pollution damage. That Convention, the International Convention on Civil Liability for Oil Pollution Damage, 1969, was submitted to the Senate for advice and consent for ratification; however, the Senate failed to give its advice and consent, because of what it considered to be deficiencies in the Convention provisions. Those deficiencies had been earlier recognized by other interests, and an additional plenipotentiary conference convened in 1971 resulting in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damages, 1971.

The International Fund Convention was designed as a supplement to the Civil Liability Convention, to provide compensation in certain cases not covered by the Civil Liability Convention as well as in cases where the provisions of the Civil Liability Convention did not allow for full compensation for damage. The Fund Convention was also submitted to the Senate, but that body has not given its advice and consent to ratification. The Civil Liability Convention and the Fund Convention are now in force. Thus far, the United States is not party to either.

Parallel to these IMCO actions to provide international oil spill liability and compensation schemes, the owners and operators of tank vessels and the international oil industry have developed two voluntary agreements. The Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP), adopted in 1969 and amended in 1978, was designed to provide swift compensation for oil spill cleanup until the Civil Liability Convention came into force worldwide. Since this Convention entered into force in 1975, the provisions of TOVALOP have remained applicable in those cases where cleanup costs involve non-party nations.

The other industry-sponsored voluntary program is related to cargo ownership rather than vessel ownership and is the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL). The agreement, adopted in 1971 and amended in 1978, was designed to supplement TOVALOP by providing additional compensation for any one incident until the Fund Convention entered into force. The provisions of CRISTAL remain applicable to those cleanup instances involving non-party nations, even though the Fund Convention entered into force in 1978.

These international schemes and voluntary schemes specify funds available, the types of vessels covered, the types of oil covered, the scope of compensable cleanup costs, and the liabilities applicable to third parties.

COMMITTEE ACTION

As H.R. 6803 was not enacted by the 95th Congress, notwithstanding the urgent need for that legislation, it was necessary to reintroduce similar legislation in this Congress. On January 15, 1979, H.R. 85 was introduced by the Honorable Mario Biaggi with over fifty cosponsors, and H.R. 29 was introduced by the Honorable Gerry E. Studds, with thirty-six cosponsors. The Subcommittee on Coast Guard and Navigation held hearings on these legislative proposals on March 13–14, 1979, during which a broad cross-section of testimony and statements for the record were received.

Testimony was received from the Coast Guard (representing the Administration and the Department of Transportation), the Environmental Protection Agency, and the National Advisory Committee on Oceans and Atmosphere, with letter comments from the General Accounting Office and the Council on Environmental Quality.

Testimony was also heard from representatives of the Center for Law and Social Policy; Independent Liquid Terminals Association; Atlantic Richfield Company; National Tank Truck Carriers, Inc.; American Institute of Merchant Shipping; American Institute of Marine Underwriters, American Isurance Association, National Oceans Industry Association; and the States of Maryland and Virginia.

Statements were also received for the record from the National Oil Jobbers Council; Edison Electric Institute; National Conference of

State Legislators; New England Electric System Company and Long Island Lighting Company; Texas Gas Transmission Corporation; the Labor-Management Maritime Committee; Maritime Law Association of the U.S.; American Waterways Operators, Inc.; American Petroleum Institute; and the State of Delaware. Numerous other organizations and individuals submitted their views in correspondence addressed to the Subcommittee or to individual Members.

After receipt of Executive Communication No. 1057 of March 21, 1979, a legislative proposal of the Secretary of Transportation, a bill was introduced by request by the Honorable John M. Murphy of New York on April 4, 1979. This bill, H.R. 3441, is generally similar to the other two bills. Although hearings were not held explicitly on this bill (due to the Administration's late submission), its provisions were made known to the Members and were considered at markup session.

At the conclusion of the hearings, the Subcommittee met in one day of markup session on April 10, 1979, at which time eleven noncontroversial amendments were proposed and adopted en bloc. The Subcommittee also accepted four other amendments and a number of technical and conforming amendments. The Subcommittee rejected one amendment, while four amendments that had been offered were withdrawn. Subsequently, the Subcommittee ordered a Committee Print of H.R. 85 and recommended that the bill, as amended, be reported to the full Committee.

The full Committee considered the legislation on May 9, 1979 and, after accepting an amendment, ordered the bill reported to the House.

Since the subject matter of this bill had been before the Committee during the two previous Congresses, most Members were quite familiar with the issues, thereby reducing the time required for discussion and review. In addition, there were relatively few new issues.

An old issue that was discussed was that of preemption. The Committee noted that this issue had been extensively debated in the last Congress and again this year. The increasing distress over the development of a multitude of State statutes related to liability and compensation for damage from oil spills, felt by those engaged in the national and international movement and storage of petroleum and petroleum products, was again articulated. It was argued that, if this continues, they will be severely hampered in their ability to conduct their operations in a manner that is economically sound and of reasonable cost to the consumer of oil.

Under H.R. 85, the States would still be free to exercise police powers and pursue civil or criminal penalty or enforcement actions against violators of State environmental laws. States may establish a fund to purchase pollution abatement equipment, or a fund for the prevention, detection, or observation of pollution, such as environmental monitoring or research programs. This perforce means that such funds may be used for the hiring and training of personnel to conduct Statewide intensive training and education programs relating to oil pollution prevention and cleanup. The States would be prohibited only from duplicating the basic purposes of the Federal fund; that is, to provide a source of compensation for those who have been victimized by oil pollution and the related evidence of financial responsibility.

In an abundance of reassurance to the States during the last Congress, the predecessor bill, H.R. 6803, was amended specifically to state that the preemption provisions do not preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment. H.R. 85 retains this provision; however, by singling out this particular State activity as not covered under the preemption subsection, neither the Subcommittee nor the Committee implies or intends to imply that other State actions, not specifically enumerated, are prohibited.

The bill also retains the provisions whereby competent State agencies may participate in the claims settlement process under the bill. The Secretary of Transportation, pursuant to his regulations, may engage State agencies to act on behalf of the fund in the processing and settlement of claims against the fund. This will enable those States that consider they are best-qualified to evaluate damages in their own areas of jurisdiction to participate actively in final claims decisions, subject of course to the procedures established under the bill and the regulations of the Secretary.

A State can and is expected to be a claimant under the legislation. In this manner, the costs of many of the oil pollution actions taken by a State will be compensable under a uniform, simple, and practicable system. Once a State expends money for removal costs, it may claim compensation for that item of damages under the procedures outlined in the bill. In addition, it may claim for damage to State property or natural resources or may recover compensation for the loss by any State or political subdivision of tax revenue, for a period of one year, due to injury resulting from oil pollution of real or personal property within its jurisdiction.

The bill will impose reasonable and insurable limits of liability, thereby making the spiller the front-line payer in most instances and insuring front-line responsibility for responding to an oil pollution incident. In those cases where the source of the pollution is not ascertainable or damage claims are not otherwise satisfied, there is a compensation fund of up to $200 million (with authorization to issue bonds to cover liability in excess of $200 million) available as a backup, a fund considerably greater than any already established by States.

In conclusion, the Committee recognized that the patchwork of oil spill liability and compensation laws already existing on Federal and State levels, and those now contemplated, can only create excessive bureaucracies and a "quilt of paperwork", all to the detriment of everyone, since we are all consumers of oil—those who will ultimately pay for these programs through the increased cost of oil.

During the latter part of the 95th Congress, as a result of the discovery of abandoned hazardous substances dump sites and a growing concern over spills from hazardous substances, an attempt was made to fold those substances into the legislation that had been developed for oil pollution liability and compensation. The Committee and the House resisted this attempt, since there had been no study of this subject by the Committee and no chance to receive input on the many complex issues involved. This attempt to introduce a new subject into an already complex piece of legislation late in the Congress was one of the primary reasons for the failure of H.R. 6803.

There is no denying that hazardous substances present a threat to the public and the environment and that an appropriate compensation and liability scheme should be developed for them. However, the issues of oil pollution liability and compensation have had extensive review and have essentially been resolved, while the many different issues of hazardous substances liability and compensation have only recently been opened to public discussion and Congressional review. Last Congress, the House Committee on Merchant Marine and Fisheries and the House Committee on Public Works and Transportation felt that, once a basic scheme for oil polution liability and compensation was enacted, a concentrated effort could then be made to resolve the issues involving hazardous substances.

To understand the hazardous substances problem one must go back to 1972. Despite passage of the Federal Water Pollution Control Act Amendments in 1972, this nation has not had an effective hazardous substances spill program since the requirements of that Act could not be enforced due to technical unfeasibility and impracticability. It was not until six years after the passage of the Act that the enforcing agency was able to publish final regulations establishing a list of hazardous substances so that the Act could be enforced.

Once that list was published and enforcement began, the courts enjoined the enforcement actions and declared invalid a substantial portion of the regulations. Because of a "quick fix" to the Federal Water Pollution Control Act in the waning days of the 95th Congress, an effective enforcement program should be forthcoming. However, this is yet to be proven, since it was only in February of 1979 that new regulatory procedures were published.

The Committee feels that the enactment of a hazardous substances liability and compensation scheme, without thorough investigation and review, could lead to a host of problems of the same type encountered in implementing the 1972 Act.

Hazardous substances is not only a subject unto itself, separate and apart from oil pollution, but is also full of complex subdivisions and degrees of hazard. As a minimum, these problems should be considered when imposing fees, liabilities, and requirements for financial responsibility. The probability and extent of damage that can be created by certain acids, for instance, are probably completely different than the probability and extent of damage that can be created by chlorine gas and, again, different from various inorganic chemicals.

The issues as to how a hazardous substances fund would be established, administered, and financed are equally complex; and, although some proposals have been offered, none have been subjected to critical review.

In addition, while liability and compensation for damages related to the transportation of hazardous substances raise a set of complicated issues, the liability and compensation for damages related to abandoned hazardous substances waste disposal sites raise a number of different complicated issues. From both the legal and technical points of view, much work remains to be done.

In contrast to the issues involved in oil pollution liability and compensation, these issues connected with hazardous substances have not been studied in depth, have not been the subject of detailed Congressional hearings, and have not been sufficiently considered by the various interested parties at conferences and symposia over a period of several years. It is the belief of the Committee that the subject of hazardous substances liability and compensation deserves the same thorough study and extensive input from concerned interests as has been the case with oil.

While it is hoped that this process can be accomplished in a considerably shorter period of time than has been spent so far on oil pollution, the Committee feels that the present bill should not be delayed while the necessary developmental work is done on the issues involved in hazardous substances. Further, it is the view of the Committee that the issues inherent in hazardous substances legislation are sufficiently different from those in oil pollution that the two subjects should be handled separately.

The Committee has adopted a number of changes to assure that H.R. 85 does not abandon any of the previous pollution legislation chartered by the Congress since 1972. In fact, it relies heavily on prior historical regulatory and judicial determinations. H.R. 85 does not present any problems from the point of view of on-scene decisionmaking and actions to remove or mitigate a spill where there are combinations of oil and hazardous substances. The bill contemplates the use of the existing systems of recordkeeping and cleanup procedures. At the present time, the use of the section 311 (Federal Water Pollution Control Act Amendments) revolving funds for cleanup of such combination spills has presented few, if any, problems; and H.R. 85 will provide considerably more funds for cleanup of these combination spills.

The Committee notes that the Administration has established a task force to study the numerous issues related to hazardous substances liability and compensation, and that the same issues are also the subject of extensive consideration within the international maritime community through the Inter-Governmental Maritime Consultative Organization. The Committee agrees that, had such studies been conducted earlier, the Administration would now be in a better position to recommend a means for inclusion of hazardous substances within H.R. 85 or within similar proposals. The Committee disagrees with those who believe that the term "study", in the eyes of Congress and the public, has become a euphemism for delay. A subject of this importance and complexity deserves extensive study.

In conclusion, the Committee agreed that the hazardous substances problem is a separate and highly complex one that should be handled by separate legislation after everyone has been given an opportunity to be heard. The Committee also agreed that it would consider and review the issues of hazardous substances liability and compensation as soon as the work on this bill, H.R. 85, is completed. This would permit the development of a fair and equitable hazardous substances liability and compensation scheme, coupled with an aggressive and effective enforcement program.

After passage of H.R. 6803 during the last Congress and again during the hearings on H.R. 85, the Committee was made aware of a critical problem with respect to requiring evidence of financial responsibility by the owner or operator of an onshore facility. These facilities includes tank trucks, pipelines, small storage facilities, large tank farms, and an innumerable variety of facilities which transport, drill for, produce, process, store, or otherwise handle petroleum or petroleum products.

Testimony and correspondence from all of the affected parties, including the insurance industry, indicated that adequate water pollution insurance coverage to meet financial responsibility requirements is not available. This would force many companies out of business (particularly the smaller ones), if they were not able to self-insure. It was indicated that, once this legislation is in place and the scope of water pollution liability within this industry can be ascertained over a reasonable period of time, an insurance market would develop. At that time, the legislation could and probably should be amended to require onshore facilities to demonstrate financial responsibility. There was no argument with the need to retain the levels of liability as required by the bill.

It was also brought out that there has been little evidence of the need for a financial responsibility requirement for onshore facilities since, unlike vessels, the facilities' assets are available for claims attachment. Further, there has been no evidence of an epidemic refusal to pay cleanup costs and related damages, nor of widespread noncompliance with oil pollution prevention measures by these owners and operators.

A number of witnesses cited the experience of the State of New York which, in 1977, included a financial responsibility requirement in its oil pollution laws that has since been repealed. New York apparently became convinced that even the large-size facility operator could not obtain adequate water pollution insurance coverage, nor afford the cost of bonding or self-insuring by showing unencumbered attachable assets based on applicable liability exposure. The onshore oil facility interests convinced the State that enforcement of its financial responsibility requirement would shut down the State's oil storage and distribution businesses.

These feelings were echoed by groups representing all geographic areas. In addition, existing law found in the Federal Water Pollution Control Act, as amended, does not have a financial responsibility requirement for onshore facilities, and this has not caused any difficulties. Therefore, and amendment was accepted to remove the financial responsibility requirement for onshore facilities while still retaining all the provisions pertaining to liability. The requirement for evidence of financial responsibility is still applicable to deepwater ports, offshore facilities on the Outer Continental Shelf, and offshore facilities on submerged lands.

The same subsection was further amended to provide some flexibility in establishing financial responsibility requirements for offshore facilities by requiring the Secretary to consider the various types, locations, and arrangements of facilities, while also considering the need for grouping multiple offshore facilities owned or operated by the same person or persons or for operations under joint venture. It was also amended in order to clearly specify that evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest facility. This corresponds to the requirements applicable to vessels.

The first significant change in the bill as reported reflects the need to provide consistency with existing pollution laws as to the scope of applicability. The Subcommittee decided that it was desirable to define "navigable waters" in the same manner as found in the Federal Water Pollution Control Act, with the intent that related judicial determinations and regulatory actions under that Act would be applicable to this legislation. Therefore, all those waters subject to section 311 of the Federal Water Pollution Control Act Amendments are subject to the requirements of this bill. This conformance and compatibility with existing laws should prevent litigation over issues which have already been resolved. The definition of "property" was likewise removed from H.R. 85, since it is not necessary as the result of the change in the definition of "navigable waters".

During the hearings some concern was expressed over the recent increases in the royalty interest under the Outer Continental Shelf Lands Act Amendments of 1978. The Members felt that this now indicated a need to provide some equity as to who should pay the fee, although in the end it will be borne by the ultimate consumer of oil. Therefore, an amendment was offered and adopted to section 102(d)(1) to make it clear that the owner of a royalty interest should bear his share of the fee, not to exceed three cents per barrel, to be collected to finance the Comprehensive Oil Spill Liability Fund.

Some objection was raised concerning this approach, since some felt the intent of fee assessment is to require the person who is in a position to prevent pollution to make the payments rather than the royalty interests who are remotely located from day-to-day field operations. Others felt that the royalty interests, if required to share in the payment of the fee, would be more inclined to exert some controlling influence to prevent pollution, thereby reducing claims. This, in turn, would permit maintaining the fund at or near its $200 million level, at which time collection of the fee would terminate.

With respect to the withholding of repayment of changed fees found at section 102(d)(2), the Administration, as well as the Members of the Subcommittee, felt that this provision, which would have permitted the fund to retain any changed fees paid, regardless of a final judicial determination of their invalidity, was unnecessary and subject to challenge on constitutional grounds. The provision was therefore deleted. Striking this provision does not, however, affect the prohibition of staying any regulations relating to fee schedules until completion of judicial review.

An amendment striking a subsection which required the General Accounting Office to audit all payments, obligations, reimbursements, or other uses of the fund, was adopted as a result of concerns expressed by the GAO. They felt that the requirements in the bill for auditing and reporting by the GAO were unnecessary and undesirable, since they already have sufficient authority to make such audits. They also felt that the specific auditing and reporting requirements were likely to draw heavily on their existing programs. In summation, the Committee felt that the GAO can satisfy the concerns of the Congress under existing statutory authorities and programs.

An amendment to section 104(b) was adopted to make it clear that the failure to report a spill, in addition to a refusal to provide all reasonable cooperation and assistance in furtherance of cleanup activities, will deprive the spiller of the right to limit his liability.

There was some feeling that the section permitting the Secretary to reduce limitations of liability for offshore facilities and deepwater ports was too broad. Since it is difficult to visualize that a deepwater port operation could ever be considered a "small business", the applicability of the exemption to such ports in section 104(c) was removed.

An amendment was requested by the administration to delete any reference to notification requirements and penalties for failure to notify, since these requirements are already found in section 311 of the Federal Water Pollution Control Act, as amended. This would avoid duplication so that there would be less possibility of a conflict in interpretation or applicability.

The recently enacted Outer Continental Shelf Lands Act Amendments of 1978 contain a requirement for an insurance study that parallels a similar requirement in this bill. Since the statutory compliance date of September 18, 1979 will, in all probability, precede the date of enactment of this bill, the study requirement was deleted.

The Administration felt a need to include a savings provision, which was accepted by amendment. The addition of subsection 201(c) saves the financial responsibility regulations issued under repealed provisions of law until superseded. This will assure that any temporary delays in the entry into force of financial responsibility requirements issued under this bill will not result in a lapse of preexisting financial responsibility requirements.

A question arose concerning the funds presently in the Trans-Alaska Pipeline Liability Fund, which will be absorbed by this fund with the enactment of this bill. H.R. 85 and the predecessor bill, H.R. 6803, include a provision that the oil companies participating in and contributing to the TAP fund would be credited with advance payments of the fee due under the Comprehensive Oil Spill Liability Fund. When H.R. 6803 was being considered, it appeared that the amount of the TAP fund could be offset as advance payments prior to the Comprehensive Fund reaching its statutory limit of $200 million. Since H.R. 6803 was not enacted into law, the continued collection of TAP fees has now reached an amount that cannot be absorbed through the proposed system of advance payments prior to the Comprehensive Fund reaching its limit.

Therefore, an amendment was proposed and accepted that would rebate the difference between the amount of assets transferred and the amount of certified outstanding claims, at a time when the fee due under this bill is no longer required to maintain the fund at or near the $200 million level. At that time, the assets transferred and remaining could no longer be used as advance payments since fees would no longer be collected.

The Administration identified the need to assure that, when the Title III fund of the Outer Continental Shelf Lands Act Amendments of 1978 is repealed by this bill, the funds received and the obligations and liabilities incurred will be subsumed by the Comprehensive Fund. The Committee agreed and amended subsection 202(f) accordingly.

An amendment that would have relieved a spiller of liability where an incident is caused "solely" by an act of war, hostilities, or certain other acts was offered, considered, and withdrawn at Subcommittee Markup. At full Committee markup, the amendment was again offered but was not adopted. It was argued that the use of the word "solely" was necessary to retain consistency with existing law, namely the Federal Water Pollution Control Act, was amended, and the Outer Continental Shelf Lands Act Amendments of 1978. It was also argued that compatibility would preclude controversy over an issue that has had some judicial review. Those who favored the use of the word "solely" felt it was necessary to make it difficult for the spiller to get into a no-liability situation. Those who favored the use of the word "primarily" felt that the spiller should be allowed to avoid liability in those situations where there might have been negligence on his part but where that negligence was not the primary cause of the spill.

The Committee noted that during the last Congress this issue was extensively debated, and there were many differences of opinion as to the exact language to be included. Many felt that the operative words as previously enacted should be retained. Others felt that a change to modify the "all or no liability" results encompassed in the use of the operative words "solely" or "primarily" would be appropriate. Therefore, an amendment to subsection 104(e) was accepted whereby the words "where the incident is caused primarily" were changed to read "to the extent that the incident is caused". This will now allocate liability in proportion to negligence and will not allow the spiller to completely escape liability, where he is considerably at fault.

Aside from defenses to liability, a critical issue during the last Congress involved the question of the extent to which an owner or operator would be able to limit his liability. Not only was the issue of insurability involved, but also the question as to the relative share of the liability in major incidents. The fund established under the bill to compensate for oil pollution damages is financed by a per-barrel fee on the oil that creates the risk of pollution. The fee is paid by the oil owners.

Under the scheme developed in the bill, the owner or operator of the vessel or facility handling the oil is in the best position to prevent and control a polluting discharge. He is, therefore, made strictly liable for all claims up to reasonable limits, while the owner of the oil carries the burdens for claims exceeding those limits, contributing his share through contributions to the fund. Thus, the cost of oil pollution, in major cases, is spread between the owner and operator of the vessel or facility from which oil enters the environment, and the owner of the oil that creates the pollution risk. Ultimately, of course, the cost to each is reflected in large measure in the cost of the product and is therefore borne by the user of the oil, the consumer.

The limitation of liability differs among the particular types of vessels and facilities. For those owners or operators who are, in essence, innocent of any personal wrongdoing which contributes to an oil pollution incident and who, subsequent to the incident, cooperate appropriately in the cleanup activities, the bill authorizes a limitation of their liability.

As to vessels, the owner or operator of a vessel that does not carry oil in bulk cargo is entitled to limit his liability to a level computed at $150 per gross registered ton of the vessel. For inland oil barges, those non-self-propelled vessels carrying oil in bulk as cargo and operating only on the internal waters of the United States, the limitation is $150,000 or $150 per gross ton, whichever is larger. For all other vessels carrying oil in bulk as cargo, the limitation figure is $250,000 or $300 per gross ton of the vessel, whichever is larger, up to a maximum of $30,000,000.

This $30,000,000 ceiling was an issue that created considerable disagreement within both the Subcommittee and the full Committee during the last Congress and that was brought up again this time. The basic concept of the bill centers around a risk-sharing scheme whereby initial liability is assumed by a spiller and the excess by the fund in those infrequent cases where the compensation required is in excess of the spiller's liability. Therefore, to permit a modicum of certainty under acceptable business practices for large as well as small owners and operators of vessels, it is necessary to provide an equitable and reasonable limit of liability.

During the last Congress, the Committee felt that this level should be set at $30 million, since a higher limit would not have any significant impact on the size of tankers to be constructed in the future; the history of total damages from oil spills had never exceeded $30 million; vessels over 100,000 gross tons ($300 per gross ton × 100,000 gross tons equals $30,000,000) could not use our inland waters because of channel depths and the casualty records of very large and ultra large crude carriers (those in excess of 200,000 deadweight tons, approximately 100,000 gross tons) most often involved explosions on ballast voyages rather than accidents causing oil pollution while on loaded voyages.

During full Committee markup on H.R. 85, an amendment was offered to raise the limit from $30 million to $50 million. After some debate, the amendment was rejected. In favor of the amendment, it was argued that the $30 million limit afforded special treatment to owners of supertankers and that insurance to meet the higher limit would be readily available. Opposing arguments were that radical increases in liability would risk loss of insurability, that the liability limits in the bill already represent drastic increases compared with the Federal Water Pollution Control Act, especially in view of the bill's sharp limitations on defenses, and that testing insurability and accumulating claims experience under the bill's provisions are necessary before raising the limits further. Raising the limits now would put the coherence of a Federal comprehensive system at risk. The Committee considered that adopting the limits in the bill would preserve a balanced approach.

Another amendment that was offered and withdrawn at Subcommittee markup after some discussion related to the deletion of the need to show that a person derives at least 25% of his earnings from activities which utilize the property or natural resource which has been subject to oil pollution, before he can become a claimant. This amendment to section 103(b)(4) would have allowed anyone suffering an economic loss as a result of an oil spill to seek compensation for that loss. It was argued that anyone being damaged should be able to be compensated for his damages no matter how small or remotely associated these damages might be.

The Subcommittee felt that the 25% cutoff was a reasonable provision to preclude the attendant massive paper workload, to reduce the number of spurious claims, to reduce the requirement for extensive and time-consuming investigation of claims, to remove the difficulty of ascertaining the actual damages by claimants who are remotely associated with the pollution incident, to provide some reasonable certainty as to exposure and losses to provide a degree of insurability, and to reduce the probability of extensive litigation.

However, the most important reason for adopting a reasonable cutoff is to permit the expeditious processing of claims from those who have suffered a clear and readily definable loss and who should be compensated in a timely manner. In addition, it was noted that the existing compensation scheme found in the Title III fund of the Outer Continenal Shelf Lands Act amendments of 1978 has a similar 25% requirement.

Another amendment, which was withdrawn in Subcommittee, would have required the Secretary of the Treasury to invest the fund's assets in local banks in the States where the fees are collected rather than in U.S. Treasury obligations. It was argued that this would insure that States supporting oil transportation and production by exposing themselves to the risks of pollution would receive the benefits of the funds invested.

The amendment was withdrawn due to its late submission which prevented an adequate review by the Members and those directly concerned within the Administration. At Full Committee Markup, the issue was not raised, primarily due to Department of Treasury opposition.

During and since the hearings, considerable concern was expressed over the establishment of various levels of liability for petroleum and petroleum product storage facilities and other onshore facilities, such as tank trucks and pipelines. Section 104(d) recognizes the fact that there is a multitude of variations in the classes of such facilities and that their liability exposure must, to the extent practicable, be comparable to limits based on volumetric capacity of ships carrying oil in bulk—in addition to taking into account the relative potential threat of pollution from these facilities.

This bill establishes a minimum floor of liability of $250,000 and a maximum ceiling of $50 million. With respect to tank farms and similar storage facilities, if the largest tank could contain 50,000 barrels of oil, the amount of liability would be the same as a tank vessel that can carry the same amount of oil. The amount of liability could more than likely be set at an even lesser amount, since the relative potential threat of oil pollution could be less than that from a vessel.

With respect to tank trucks, one must not confuse gross tonnage of a vessel with the gross weight of the tank truck. Gross tonnage is a unit of measurement of 100 cubic feet to the ton for the purpose of measuring the total internal volumetric carrying capacity of the vessel. On the other hand, gross weight of a vehicle is its weight in pounds fully loaded. In any event, the average volumetric capacity of a tank truck which measures 42 feet in length with an 8-foot diameter contains 8,444 cubic feet, which equates to 84 gross tons. The largest tank truck (reportedly used on the West Coast) is a two-unit tandem truck measuring 40 feet and 20 feet, both with an 8-foot diameter. These units equate to 12,063 cubic feet or 120 gross tons. Therefore, under no circumstances could a tank truck operation be liable for an amount in excess of $250,000.

A number of questions have been raised with respect to the effect the fee collected from received oil, at a rate not to exceed three cents a barrel, would have on the economy and how long it would take for the fund to reach its maximum allowable level of $200 million. Making some assumptions with respect to how much oil is being received on a daily basis and estimating claims, it appears that the fund will be fully financed within two years, excluding a catastrophic oil spill.

Assuming we will be importing 9 million barrels a day at a fee set at three cents a barrel, and that we will be moving 11 million barrels a day of domestic oil by pipeline at a fee set at one cent per barrel, the fees received will approximate $380,000 a day or $11.4 million a month—or $205,000,000 within eighteen months. The fund at the end of two years would certainly be able to reach the statutory limit of $200,000,000, even if the fund had to pay claims in excess of $74,000,000. This does not consider the availability of additional moneys as a result of investing the fund's assets in interest-bearing accounts or securities.

In summation, it should take no longer than two years to establish a fund with $200 million in assets, at which time the collection of fees would terminate and the interest received from investments should be sufficient to meet all obligations.

The Committee on Merchant Marine and Fisheries, after considering this legislation at Markup on May 9, 1979, by unanimous voice vote, a quorum being present, ordered H.R. 85, as amended, reported to the House. As so reported, the bill establishes an unlimited, readily-accessible compensation fund so that cleanup of oil pollution may be facilitated and claimants damaged by oil pollution may be compensated. Other provisions of the bill, including claims procedures, liability and the limitation thereof, requirements for financial responsibility, as well as the preemption features, are intended to implement those basic purposes.

The bill is a significant step, long needed to bring order out of the mounting chaos on the subject of compensation for oil pollution damage. It is not intended to address any other aspect of oil pollution. It does not, therefore, contain any requirement on standards of construction or operation of vessels or facilities, nor on specific requirements for response to pollution incidents. In providing a clear-cut mechanization for compensation, however, it should provide important incentives for compliance with other laws in the pollution area, and for voluntary actions to reduce and respond to pollution incidents.

SECTION-BY-SECTION ANALYSIS

DEFINITIONS

Section 101

(*a*) For brevity, "Secretary of Transportation" is shortened to "Secretary". The Secretary of Transportation is the Federal official primarily responsible for the implementation of the Act.

(*b*) "Fund" refers to the $200 million fund established under section 102, which is available to compensate those claimants who are not otherwise compensated.

(*c*) "Person" includes individuals and business associations and groups, as well as governmental entities.

(*d*) "Incident" defines the type of event which triggers the designation and advertisement provisions of section 106. "Incident" includes events which directly threaten, as well as those which cause, oil pollution. Depending upon the type of event involved, an incident will trigger the appropriate procedural requirements of section 106, as well as responsive action under other laws, such as the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act of 1974.

(*e*) The word "vessel" is given the broadest definition possible. The intent is to exclude no watercraft from the scope of the definition. Vessels are one of the two major classes of oil handling devices, the owners or operators of which are subject to liability under the Act (the other being "facilities"). The definition is consistent with that found in section 3 of title 1, U.S. Code.

(*f*) "Public vessel" is a subclass of vessel that performs governmental functions for Federal, State, or local units of government. It is a significant definition for purposes of ascertaining liability. Public vessels are exempted from the liability provision in section 104(a), and a victim of oil pollution caused by a vessel must seek relief against the fund. A vessel owned and operated by a governmental entity, however, is not necessarily a public vessel under this definition. A government-owned or operated vessel, engaged in commercial service, is not included in the definition and would be subject to the provisions of this Act. "Commercial service" means all types of trade or business involving the transportation of goods or persons, but excludes those vessels performing service as combatant vessels.

(*g*) "Ship" is a subclass of vessel that carries oil in bulk as cargo. Cargo refers to oil being transported as merchandise from one place to another, including oil owned by the ship owner or operator. Residue is intended to assure that an oil tank vessel, whether partially loaded, in ballast, or containing residue of a recently discharged cargo of oil, continues to be treated as a ship. When a tanker has been cleaned and is ready to carry bulk cargoes such as grain, ore, or coal, it would be subject to the provisions applicable to vessels. "Ship" includes self-propelled vessels and those non-self-propelled vessels that are certificated to operate outside the internal waters of the United States. "Internal waters" are those waters defined in Article 5(1) of the Convention on the Territorial Sea and the Contiguous Zone and include the Great Lakes and rivers, bays, and sounds that are landward of the baseline used to determine the territorial sea. Oil-carrying barges operating solely within internal waters are not classified as ships. The definition is significant in terms of the provisions of section 104(b)(3), relating to limitation of liability.

(*h*) "Inland oil barge" is an oil-carrying vessel that is certificated to operate only on the internal waters of the United States. The applicable limitation of liability is found in section 104(b)(2).

(*i*) "Facility" is an all-encompassing definition that describes the major class of oil handling devices, other than vessels, whose owners or operators are subject to liability under section 104. To fall within the definition, a structure, or group of structures, must be used for the movement, production, or handling of oil. Included are such structures as drilling and producing platforms, storage tanks (both above and underground), terminals, refineries, pipelines, railroad tank cars, and tank trucks. Also included are mobil drilling rigs while at a drilling site in the drilling mode. When moving by water to and from the drilling site, drilling rigs would fall within the definition of "vessel" under subsection (e).

(*j*) "Onshore facility" is a subclass of facility. It includes any facility, other than an offshore facility, that is located in, on, or under any land of the United States. It includes motor vehicles, tank trucks, train tank cars, and any other rolling stock. This definition is intended to be consistent with the one found in section 311 of the Federal Water Pollution Control Act, as amended.

(*k*) "Offshore facility" is another subclass of facility. It includes facilities which are located in, on, or under the navigable waters of the United States, or, if the facility is subject to the jurisdiction of the United States, facilities located in, on, or under the high seas. In general, offshore facilities are primarily production facilities or pipelines. However, depending upon their location, terminals and refineries might also fall within the definition. This definition is intended to be consistent with the one found in section 311 of the Federal Water Pollution Control Act, as amended.

(*l*) "Terminal" is a subclass of facility. The definition is significant for the purposes of section 102(d), under the terms of which the owners of terminals are responsible for the fees through which the compensation fund is maintained. Included are permanently situated facilities, that (1) are located within the territorial limits of the United States, whether in, on, or under land or water; (2) are not owned by an agency of the Federal government; and (3) receive oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or a pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act.

(*m*) "Refinery" is a subclass of terminal, and includes those terminals that receive crude oil for the purpose of refinement.

(*n*) "Oil Pollution" is one of the key definitions in the Act. Under the Act, claims may be asserted only for damages for economic loss which has a casual connection with oil pollution. Liability attaches to an owner or operator of a facility or vessel, or to a guarantor, only when the facility or vessel involved is the source of oil pollution or poses a threat of oil pollution. In the first part of the definition, the oil must be present in unlawful quantities or must have been discharged at unlawful rates, in certain locations. For territorial waters, this means that there would have to be a violation of section 311(b)(3) of the Federal Water Pollution Control Act, as amended. That Act, as implemented by the regulations promulgated thereunder, basically prohibits the discharge of oil which results in an oil sheen. Since such a discharge would be an unlawful quantity under that Act, it would constitute oil pollution under the definition of this Act. On the other hand, a discharge of oil into the contiguous zone, by a vessel subject to Article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, as amended, might well not constitute oil pollution under this part, since Article IV allows certain discharges under specified conditions. These permissible discharges, being lawful, do not constitute oil pollution under clause (1), although they may constitute oil pollution under clause (2).

Unlawful discharge of oil into the navigable waters of the United States would be oil pollution if it has been discharged in violation of the regulations and standards promulgated under or found within the Federal Water Pollution Control Act, as amended. The coverage also extends to lands which closely border any of the included waters, a discharge onto which would result in an immediate threat to the adjacent waters.

The second part of the definition relates to locations seaward of the territorial limits. Under this part, the presence of oil on the high seas constitutes oil pollution if it results from Outer Continental Shelf Lands Act activities or deepwater port operations; causes injury to resources belonging to, or under the exclusive management authority of the United States; or results from ship movements of Trans-Alaskan pipeline oil to a United States port. The presence of oil in these cases may constitute oil pollution even though it is not specifically "unlawful" under any other statute.

Oil pollution also may involve discharges of oil onto the territorial sea or adjacent shoreline of a foreign country, where the elements of section 103(b)(6) are satisfied. That provision generally permits a claim to be asserted by a foreign resident where the discharge originated in United States navigable waters or from certain offshore activities under U.S. control, with an ensuing spread to the foreign territorial sea and where reciprocal rights are provided to United States residents by the claimant's country. Therefore, "oil pollution" would not extend to a discharge onto the internal waters of another country, because those waters are not a part of the territorial sea, nor would "oil pollution" extend to those discharges which originated outside United States navigable waters other than OCS or deepwater port operations. By way of illustration, an unlawful discharge in United States navigable waters off the coast of Maine, which drifted into the territorial sea of Canada off the coast of New Brunswick, would constitute oil pollution provided that the claimant had standing to assert a claim under section 103(b)(6).

(*o*) "Navigable waters" is significant for purposes of the definition of "oil pollution" found in section 101(n). The definition of "navigable waters" does not reflect the traditional admiralty concept. The definition has been taken from section 502(7) of the Federal Water Pollution Control Act, as amended, with the intent that judicial interpretations made under that Act would be applicable to this legislation. Therefore, all those waters subject to section 311, Federal Water Pollution Control Act jurisdiction are included in this definition. This conformance should prevent litigation over issues that have already been resolved.

(*p*) "U.S. claimant" describes the broadest class of claimants that may assert claims for damages under section 103(a), and applies to any resident of the "United States" as that term is defined in subsection (r).

(*q*) "Foreign claimant" is a limited class of foreign residents who may assert a claim for damages under the bill. To qualify as a "foreign claimant," the claimant must satisfy all the requirements of section 103(b)(6).

(*r*) "United States" and "State" are used in their broadest sense to cover not only the several States, but various other classes of governmental jurisdictions.

(*s*) "Oil" encompasses all petroleum, including fractions and residues of crude oil. It does not include nonpetroleum oil or products, such as whale oil or vegetable oil. Those oils are outside the scope of this Act, although they are subject to the Federal Water Pollution Control Act, as amended.

(*t*) "Cleanup costs" includes not only the costs of actually removing discharged oil, but also the cost of measures taken to prevent oil pollution from occurring. This definition should be read in the context of the definition of "removal costs" found in subsection (aa).

(*u*) "Barrel" is defined to make sure we are speaking of a barrel whose contents are at a temperature of 60 degrees Fahrenheit since the volume of various petroleum products can vary extensively when subjected to extremes in temperature.

(*v*) "Claim" is the description of a demand for compensation brought directly against a responsible party or against the fund. It is distinguished from a cause of action, which is a demand for compensation pursued through the judicial system.

(*w*) "Discharge" is intended to describe any type of release of oil. It is used in connection with the definition of oil pollution in subsection (n). This definition is intended to have the same meaning as that given in section 311(a)(2) of the Federal Water Pollution Control Act, as amended, although it does not specifically include section 402 point source discharges. It was felt that this was not necessary since the bill excludes lawful discharges. The bill does this by defining oil pollution to be the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate. Since a 402 discharge is lawful, it cannot be considered oil pollution under this Act.

(*x*) "Owner" is defined to include not only those persons who hold title to a vessel or facility but those who, in the absence of holding a title, possess some equivalent evidence of ownership. It does not include certain persons possessing indicia of ownership (such as a financial institution) who, without participating in the management or operation of a vessel or facility, hold title either in order to secure a loan or in connection with a lease financing arrangement under the appropriate banking laws, rules, or regulations.

Owners form one of the three major classes (the others being operators and guarantors) subject to liability under the Act. For example, a financial institution which held title primarily to secure a loan but also received tax benefits as the result of holding title would not be an "owner" as long as it did not participate in the management or operation of the vessel or facility.

(*y*) "Operator" is the second major class subject to liability under the Act. Operators of vessels do not include those individuals who are not totally responsible for the operation of a vessel. To fall within the definition, the individual must have assumed the full range of operational responsibility. For example, a pilot might be in charge of navigation of a vessel for a short duration, yet he does not meet the definition of "operator", since he neither mans nor supplies the vessel. In the case of a facility, an "operator" is defined to be a person who is carrying out operational functions for the owner of the facility pursuant to an appropriate agreement.

(*z*) "Natural resources" has been defined due to its widespread use and lack of meaning as to what it encompasses. This makes it clear that a natural resource is a living resource which might be affected by oil pollution within the territorial seas and the high seas within the 200-mile fishery conservation zone.

(*aa*) "Removal costs" are those costs incurred in cleaning up or preventing oil pollution. There are two classes of removal costs: those cleanup costs defined in subsection (t), and those costs incurred by the Federal Government under the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act. Removal costs are recoverable under section 103(a). The type of removal costs incurred under any of the specified three Acts will be reimbursed out of the fund, regardless of the existence of any defenses that could be asserted by the fund against other types of claims. This is provided for in section 104(f)(2). The other type of removal costs, "cleanup costs", are subject to the defenses that may be asserted by the fund under section 104(f)(2).

(*bb*) "Guarantor" is the third major class subject to liability under the Act. It is a generic term that describes any person, except an owner or operator, who provides the evidence of financial responsibility required under section 105. The term includes any person providing insurance, guarantees, or surety bonds for liability imposed on an owner or operator under the Act.

(*cc*) "Internal waters of the United States" has been defined to assure that inland oil barges, that normally operate on the internal waters of the United States and that on occasion proceed on waters which are a part of the Gulf Intracoastal Waterway, outside the baseline from which the territorial sea is measured, will be subject to the liability limits of an inland oil barge.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

Section 102

(*a*) This subsection is the basic provision that establishes the Comprehensive Oil Spill Liability Fund, which will be used to satisfy claims in accordance with the provisions of the Act. The fund, which will be administered jointly by the Secretaries of the Treasury and Transportation, is given the power to sue and be sued in its own name. The $200 million figure represents the maximum level at which the fund is to be maintained. It does not represent a limitation of liability for claims against the fund; the fund will be liable for all provable damages even though they may exceed $200 million.

(*b*) This subsection sets out the three major sources of revenue for the fund. First, are all the revenues derived from the per barrel fee imposed on the owners of terminals under subsection (*d*). Second, are all amounts recovered by the fund as the subrogee of those claimants whom the fund has compensated. The right to subrogation is set out in section 108. Third, are all sums which may be recovered under any other provision of the Act or collected on behalf of the fund, such as interest due the fund.

(*c*) This subsection provides that, in addition to being available for the settlement of claims, pursuant to the procedures outlined in section 107, the fund shall also be immediately available to designated persons for removal costs as described in section 101(aa)(1). Those costs relate to actions undertaken pursuant to the authority of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, and section 18(b) of the Deepwater Port Act of 1974. The Secretary of Transportation is authorized to promulgate the regulations that designate the person or persons who may obligate money from the fund for such removal costs.

(*d*)(*1*) This paragraph provides the basic authority for the Secretary of the Treasury to collect a fee, not to exceed three cents per barrel of oil received, from the owners of terminals, as defined in section 101(1). The class of refinery or terminal owners from which the fee is collected is limited to those who own a permanently situated facility, located within the territorial limits of the United States, which receives oil for export or entry in bulk from vessels, pipelines, or offshore facilities. The word "entry" not only means import into the United States, but any type of movement into the U.S., and particularly oil coming from offshore developments under the Outer Continental Shelf Lands Act or the Submerged Lands Act.

The owners of deepwater ports, as delineated in the Deepwater Port Act of 1974, are exempt from the collection requirement, because these ports are not terminals under section 101(1), since they are located outside the territorial limits of the United States. As far as the oil is concerned, this exemption merely postpones fee collection until such time as the oil is received within the territorial limits of the United States.

Since a literal reading of the fee collection provisions might require more than one collection on the same oil, the Act provides that, once a fee has been levied on any oil, that oil shall not be subject to further such levies under the Act.

The bill also makes it clear that the owner of a royalty interest under the authority of the Outer Continental Shelf Lands Act should bear his proportionate share of the fee of be collected to finance the fund.

(*2*) The Secretary of the Treasury is primarily responsible for the collection of specific fees and is authorized, under this paragraph, to promulgate regulations, after consultation with the Secretary of Transportation, relating to the collection of such fees. The paragraph also authorizes the modification of the per barrel fee as may be necessary to sustain the fund at a level not less than $150 million and not more than $200 million. The exact level of the fund is to be determined by the Secretary of the Treasury, as reasonably close to the $200 million level as may be necessary and practicable. The paragraph further provides that any such modification may become effective no earlier than 90 days after it is published in the Federal Register.

Because court challenges to these regulations could be lengthy, any interference with the collection of fees while the challenge is pending could have a serious impact on the ability to keep the fund within the $150-200 million level. Therefore, any stay of regulations relating to fee schedules is prohibited until the completion of judicial review.

(*3*)(*A*) This subparagraph establishes a civil penalty, not to exceed $10,000, for the failure to collect or pay the fee, as required by the regulations promulgated under subsection (d)(2). The Secretary of the Treasury is authorized to assess the penalty. Upon a failure of payment of any fee, penalty, or interest thereon, the Attorney General is authorized, at the request of the Secretary of the Treasury, to take action on behalf of the fund to collect the unpaid amounts.

(*B*) Criminal sanctions, in accordance with section 1001 of title 18, United States Code, may be imposed upon anyone who is convicted of falsifying records or documents that are required to be kept pursuant to the regulations promulgated by the Secretary of the Treasury under this subsection.

(*4*) This subparagraph authorizes the Secretary of the Treasury to designate those records that are reasonably necessary to be kept by the persons from whom fees are to be collected, and provides that the Secretary of the Treasury and the Comptroller General may have access to those records, for auditing purposes. No authority is provided in this subparagraph to obtain access to any records except those specifically designated.

(*e*)(*1*) The history of claims for oil spill damage indicates that the $200 million level represents a more than adequate ceiling. It is not expected that any single incident would produce claims even approaching the $200 mlilion level. Therefore, it is contemplated that the Secretary would develop, subject to the minimum and maximum amounts prescribed in subsection (d)(2), the information necessary to determine the amount of funds required in order to promptly meet the anticipated obligations of the fund.

(*2*) Once having determined what a reasonable maintenance level is, the Secretary of the Treasury is given the flexibility to invest any excess amounts in interest-bearing special obligations of the United States. Any interest on, or profit from the sale of, these obligations shall revert to the fund.

(*f*) If the level of the fund is not adequate to meet its obligations, the Secretary of Transportation is authorized to borrow from the Secretary of the Treasury the money necessary to meet those obligations. The Secretary of Transportation shall do so by issuing notes on obligations to the Secretary of the Treasury, in accordance with terms and conditions set out by the latter. The fund shall be used to retire these obligations. The notes or obligations issued by the Secretary of Transportation shall bear an interest rate determined by the Secretary of the Treasury, which takes into account yields of comparable obligations. Purchase, sale, or redemption of these notes by the Secretary of the Treasury is authorized as a public debt transaction.

DAMAGES AND CLAIMANTS

Section 103

This section enumerates the damages which may be claimed under the Act. It is important to note that the damages enumerated in subsection (a) may not, in all instances, be available to all claimants. Subsection (a) must be read in conjunction with subsection (b), which describes those parties who have standing to bring the claims for the various damages that are set out in subsection (a).

"Removal costs" is a recoverable economic loss, as provided under subsection (a)(1). Subsection (b)(1) provides that any claimant may recover removal costs. To create an incentive for maximum participation in cleaning up, foreign claimants are permitted to recover these costs, even if the conditions imposed by subsection (b)(6) are not met. The owners or operators of a vessel or facility involved in an oil pollution incident have limited standing. The owner or operator who undertakes the cleanup of an oil spill may assert a claim against the fund for the cost of such an undertaking, either if he has a defense to liability under section 104(c) or if he is entitled to a limitation of liability under section 104(b). In the latter case, where entitled to limitation, his right to claim is limited to the excess cost incurred above the limitation to which he is entitled.

The purpose of this provision in relation to owners and operators is two-fold. First, it removes any disincentive that the owner may have in undertaking the cleanup, based on the liability issue; and, secondly, it serves as an encouragement for him to continue his cleanup activities, even after his limitation of liability has been reached, by affording him a basis for compensation of the cost of cleanup in excess of his limitation. A guarantor involved would have the same rights, as subrogee to the owner or operator.

When property is in some way injured by oil pollution, two avenues of relief are provided. Under subsection (a)(2), recovery for the injury to, or destruction of, that property is permitted; and, under subsection (a)(3), recovery for economic loss that results from being unable to use such property is permitted. Any United States claimant may bring claim under these two theories of recovery in accordance with subsection (b)(2).

Damages for, injury to, and destruction of natural resources under subsection (a)(4) may be claimed only by the President, as trustee of those natural resources over which the Federal government has jurisdiction, or by a State for natural resources under its jurisdiction. The jurisdiction of the Federal government specifically includes resources over which it has exclusive management authority, such as those covered by the Fisheries Conservation and Management Act of 1976. The jurisdiction of a State extends to those resources within the State's boundaries which, though not in fact belonging to the State, may be held in trust by the State for the benefit of its citizens or otherwise managed or controlled by the State. The standing to bring such a claim is conferred in subsection (b)(3). An example would be a State's claim against a discharger for injury to a coastal State park. Compensation paid for damages under subsection (a)(4) must be used to restore the damaged natural resource or to acquire similar resources.

A separate theory of recovery in connection with natural resources is provided under subsection (a)(5) for those parties who suffer an economic loss because they are unable to use a natural resource injured by oil pollution. Standing for claiming such a loss is conferred on any United States claimant by subsection (b)(2).

The provisions of subsection (a)(6) allow recovery for loss of earnings due to injury of property or natural resources. In order to acquire standing to bring a claim under subsection (b)(4) for lost earnings, the claimant must derive at least 25% of his earnings from economic activity which utilizes the injured property or natural resources. The claimant need not be the owner of the property injured in order to having standing to bring a claim for lost earnings, as was required at common law. This means, for example, that a worker at a coastal hotel might have standing to bring a claim for damages, even though he owns no property which has been injured by oil pollution.

When injury to real or personal property occurs and the injury causes a reduction in tax revenue derived from that property, a State or local jurisdiction is given standing under subsection (b)(5) to assert a claim for one year's loss of revenue, attributable to such reduction.

Under subsection (b)(6), foreign claimants, as defined in section 101(q) and subject to the limitations in section 101(n)(3), are given rights comparable to United States claimants, provided they meet certain conditions. First, it should be borne in mind that oil pollution, as defined in section 101(n)(3), has a particular meaning for foreign claimants. Only oil pollution in the navigable waters of the United States or in the territorial sea or adjacent shoreline of the foreign country gives rise to a claim. Furthermore, under this subsection, there are four prerequisites to assertion of a claim by a foreigner. All four prerequisites must be met.

Where oil pollution occurs in a foreign country, the claimant must be a resident of the country where the oil pollution occurred. The claimant must not have been compensated through some other means for his loss. The discharge which resulted in oil pollution must have occurred in United States navigable waters or from certain activities under the control of the United States. Lastly, the recovery must be authorized by treaty or executive agreement, or the country involved must provide a comparable remedy for United States claimants in similar situations.

In the case of oil being transported from the trans-Alaska pipeline to the continental United States, conditions as to location of the discharge need not be satisfied where the oil is discharged, even outside United States navigable waters, at any time before it is brought ashore into a United States port. This provision substitutes for a similar provision in section 204(c) of the Trans-Alaska Pipeline Authorization Act, repealed by section 202 of this Act.

Subsection (b)(7) authorizes the Attorney General to act on behalf of a group of claimants and to consolidate their claims. This clause is designed to expedite the settlement of claims under section 107. Aside from consolidating the settlement of claims, through the negotiation process, it is contemplated that the Attorney General would also be authorized to bring a class action in accordance with the Federal Rules of Civil Procedure.

Subsection (c) effectively suspends the rights of a claimant to bring a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure until 60 days have passed from the time when the Secretary of Transportation identifies the source of oil pollution under section 106. This suspension of rights to bring a cause of action is consistent with section 107, the claims settlement section, which encourages the negotiations to proceed for at least 60 days before resort to the court system is allowed. The fact that the Attorney General does not exercise his authority shall have no bearing on attempts by other parties to bring a class action under the provisions of Rule 23.

Subsection (d) provides for relaxation of the notice publication requirements of the Federal Rules of Civil Procedure by authorizing the satisfaction of those requirements in connection with class action suits for classes of more than 1,000 by publication of notices in local newspapers of general circulation in areas in which the damaged persons reside.

LIABILITY

Section 104

Subsection (a) establishes the basic theory of liability: owners and operators of vessels or facilities which are the source of or pose a threat of oil pollution are subject to joint, several, and strict liability for the damages described in section 103. Posing a threat of oil pollution requires the presence of circumstances justifying the incurrence of the removal costs described in section 101(aa)(1). Thus, liability could be created if a vessel were damaged and costs had to be incurred to prevent the vessel from breaking up and releasing oil. However, no liability would result from the tanker traffic alongside waterfront property which reduced property values because of the potential for an oil spill.

Where the owner or operator is, in effect, innocent of personal fault, he may limit the imposed liability to specified levels. The amounts subject to limitation are the total of the liability under subsection (a) and any removal costs incurred by or on behalf of the owner. The additional language referring to removal costs is included to make it clear that, if an owner or operator spends money on removal costs for his own spill, that amount will be included as a part of the total liability to which he is subjected. This provision will provide an incentive for the owner or operator to immediately begin cleanup activities which should result in a reduction of other potential damages.

For vessels carrying oil in bulk as cargo, other than inland oil barges, the liability may be limited to the greater of $250,000 or $300 per gross ton (up to a maximum of $30,000,000). In the case of inland oil barges, the liability is $150,000 or $150 per gross ton, whichever is greater. In the case of other vessels, the liability is limited to $150 per gross ton, without regard to any minimum and without regard to any maximum other than that determined by the tonnage of the vessel. It should be noted that gross tonnage is a unit of measurement of 100 cubic feet to the ton for the purpose of measuring the total internal volumetric carrying capacity of the vessel. In most cases it will be the so-called gross registered tonnage. On those vessels not required to have admeasurement certificates, the gross tonnage would have to be computed using acceptable admeasurement procedures.

For offshore facilities operated under authority of the Outer Continental Shelf Lands Act, the liability level is $50,000,000 plus removal costs. For other facilities, which include onshore facilities and facilities subject to the Submerged Lands Act, a maximum liability of $50,000,000 applies. The definition of "facility" is so broad, however, that many owners and operators would be subject to unreasonably high limits of liability, considering the threat posed by a particular facility. For example, an oil discharge from a tank truck (which is, by definition, a facility), is unlikely to result in oil pollution of the magnitude caused by a discharge from an oil refinery or deepwater port. To require the owner of that tank truck to be strictly liable for $50,000,000 would be inequitable.

Therefore, the bill directs the Secretary, in subsection (d) to establish different limits of liability for all facilities other than offshore production facilities. In order to provide equitable treatment for facilities, it is contemplated that the limits designated by the Secretray would strike a rough equivalent between a ship and a class of facility where they pose a comparable potential for oil prollution. In this regard, the Secretary is enjoined to take into account not only such factors as relative handling capacities, but also special circumstances which would reduce the oil pollution threat, such as an extensive diking arrangement around shoreside terminals capable of confining oil discharges from storage tanks.

None of these limitations of liability are available when the incident triggering the oil pollution is caused by gross negligence or willful misconduct within the "privity or knowledge" of the owner or operator. The test of "privity or knowledge" is that applied under admiralty law. Under that test, acts are committed within the "privity or knowledge" of the owner when committed by persons to whom full control and authority have been given by the owner, such as in the case of a corporation, by the designation of a "managing officer". Acts of employees to whom general authority has not been delegated are not attributable to the owner as within his "privity or knowledge" in the absence of proof of actual knowledge on his part. The knowledge of the "managing officer" is imputed to the owner.

Neither is limitation of liability available when the incident is caused by a violation with in the privity or knowledge of the owner or operator, of applicable Federal standards or regulations related to the safety, construction, or operation of the vessel or facility, nor is it available when, after an incident, the owner or operator fails to report the incident or refuses his reasonable participation in the ensuing cleanup activities, as may be requested by the responsible Federal official. The term "responsible Federal official" refers to that official designated, pursuant to statute or regulation, as being the coordinator of pertinent Federal cleanup activities.

When the owner or operator invokes limitation of liability the burden of providing his ineligibility for such limitation will rest with the party asserting such ineligibility.

Subsection (c) permits the Secretary to reduce the limitations of liability for offshore facilities operated under the authority of the Outer Continental Shelf Lands Act if he makes a determination through the rulemaking process that the limitation will have a significant adverse impact on small business enterprises or have a significant anticompetitive impact. However, he can only reduce the limitation to not less than the total of all removal costs, plus an amount not less than $35,000,000.

Subsection (d) authorizes the Secretary to issue appropriate regulations that will establish limits of liability for facilities other than offshore production facilities. The Secretary is required to take into account the size, type, location, storage, and handling capacity, and any other matter bearing on the likelihood of an incident resulting in oil pollution. He is further enjoined to make the limitation of particular classes comparable to the limitation available to owners of vessels carrying oil in bulk as cargo, taking into account the relative pollution threat, including protective measures taken to avoid such pollution. (See supra for additional commentary in Committee Action.)

Subsection (e) partially exonerates the owner and operator from the liability imposed by subsection (a), to the extent that the incident is caused by an act of war, hostilities, civil war, or insurrection, or by a natural phenomenon of exceptional, inevitable, and irresistible character, or as to a particular claimant, to the extent that the gross negligence or willful misconduct of the claimant contributed to the incident or economic loss.

The defense for the exceptional natural phenomenon is similar to, but more limited in scope than, the "act of God" defense. It has three elements: the natural phenomenon must be exceptional, inevitable, and irresistible. Proof of all three elements is required for successful assertion of the defense. The "act of God" defense is more nebulous, and many occurrences asserted as "acts of God" would not qualify as "exceptional natural phenomena". For example, a major hurricane may be an "act of God", but in an area (and at a time) where a hurricane should not be unexpected, it would not qualify as a "phenomenon of exceptional character".

A partial, comparative negligence-type defense is provided to the extent that the incident is caused by an act or omission of a third party. A "third party" is defined as a person other than the claimant; the owner or operator; or an employee, agent, or one who is in a contractural relationship with either of the foregoing. If an act or omission of a vessel's pilot causes an incident, for example, the owner or operator could not claim the third-party defense, since the pilot would be deemed an agent of the vessel. Likewise, if an incident is caused by an act of a tug providing docking assistance to a vessel, the owner or operator would not be entitled to claim this defense, since the tug was in a contractural relationship with the owner or operator and the incident resulted from actions taken pursuant to that relationship.

The owner or operator is exonerated as to a particular claimant when the claimant's gross negligence or willful misconduct contributed either to the incident or to the economic loss; a partial defense is provided to the extent that the incident or economic loss is caused by the simple negligence of that claimant. These two defenses, unlike the others, apply to acts or omissions relating to the economic loss as well as the incident itself. Thus, if a particular claimant does not cause the incident in any way, he may still be barred, totally or partially, from recovery, if his own acts or omissions cause the economic loss. An example is a fisherman who, ignoring warnings of the occurrence of an oil spill, deliberately goes out to fish in the area of the spill and has his gear damaged as a consequence.

When any assertion is made by the owner or operator that he is entitled to exoneration from, or reduction of, his liability, pursuant to the provisions of the subsection, the burden of proving his right to such exoneration or reduction will rest with the owner or operator.

Subsection (f) sets out the basic liability of the fund, which, as established under section 102, constitutes one of the major features of this legislation. The specific procedure for asserting claims against the fund is outlined in section 107, whereby the fund serves to provide compensation in those instances where claims are not fully satisfied by payment from a responsible party, or where the responsible party cannot be identified or is not liable under the Act.

Paragraph (2) of subsection (f) exonerates the fund from liability only where the incident is caused by an act of war, hostilities, civil war, or insurrection, or, as to a particular claimant, where his gross negligence or willful misconduct contributed to the incident or to his economic loss. Further, as to a particular claimant, the liability of the fund may be reduced to the extent that the incident or loss is caused by the negligence of claimant.

In addition to the liability for damages, subsection (g) imposes liability on owners, operators, and guarantors for interest over and above the limitations of liability invoked under subsection (b). Under subsection (g), the owner, operator, or guarantor is liable for interest on the amount paid in settlement of a claim, starting from the time when the claim was presented, and running to the time when the claim is paid. However, when the owner, operator, or guarantor offers an amount equal to, or in excess of, the amount finally settled upon, and such an offer is made within 60 days of the date upon which the claim was presented, or of the date the advertising was commenced, pursuant to section 106, there is no liability for any interest other than for the period between the time that the offer was accepted and the time the claim was paid. For a similar offer made afer the pertinent 60-day period, the owner, operator, or guarantor will, in addition, be liable for interest for the period between the time the claim was asserted and the time the offer was made. The interest involved under this subsection is to be calculated at the commercial rates specified in paragraph (2).

Subsection (h) provides that no indemnification, hold harmless, or similar agreements between an owner or operator of a facility liable under this Act and a third party shall be effective in transferring liabilities imposed on facility owners or operators under the Act. This prevents the owner of a facility from attempting to pass his liability off to his contractors, whether or not they are negligent, as a cost of doing business with him.

It further provides that this does not preclude the holder of a leasehold interest or permit for the exploration of oil to agree to indemnify or hold harmless the owner or operator of a vessel or facility engaged in activity on behalf of the holder of the leasehold interest or permit.

The subsection does not, of course, prevent any person from serving as guarantor, pursuant to the terms of the legislation, nor does it prevent an owner or operator who is held liable from taking appropriate legal action against the person whose negligence caused, or contributed to, the incident which resulted in that liability.

Subsection (i) preserves to owners and operators, subject to liability under this Act, all rights which they may have, under any other law, against any third party. This provision insures that an owner or operator will not be barred from recovering against a third party whose negligence actually caused the incident which resulted in liability being imposed under this Act. The measure of recovery against such a third party would have reference to the sums paid out under this Act as a foreseeable consequence of the negligent conduct of the third party. When a guarantor is involved, he would succeed, through subrogation, to the rights of the owner or operator for whom he provided evidence of financial responsibility.

Subsection (j) provides for the superseding of all laws relating to limitation of liability which are inconsistent with the provisions of this Act.

FINANCIAL RESPONSIBILITY

Section 105

Another major feature of the Act is the requirement that there be adequate funds immediately available to compensate injured parties. Since the primary responsibility to compensate victims of oil pollution rests with an owner or operator of a pollution source, he is generally required to establish his capability to meet his potential liability.

Subsection (a) imposes on the owners or operators of vessels over 300 tons the requirement that they carry insurance, have guarantees or surety bonds, or qualify as self-insurers to meet their liability up to the level of the limitation available under section 104(b). This requirement to maintain evidence of financial responsibility is imposed on all such vessels, including foreign vessels using our navigable waters or calling at offshore facilities subject to the jurisdiction of the United States, as covered by the Act. If an owner or operator has more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability of any one vessel.

Paragraphs (2) and (3) provide the necessary sanctions for enforcing the financial responsibility requirements. Failure to comply with subsection (a)(1) will result in a termination of the right to engage in trade by triggering a refusal of necessary clearances by the Secretary of the Treasury under Customs laws, and the denial of entry or detention of noncomplying vessels by the Secretary of Transportation.

Comparable requirements to maintain evidence of financial responsibility. sufficient to meet the liability imposed under section 104(b), are placed on owners or operators of offshore facilities. All offshore facilities, as defined in section 101, must establish the necessary evidence of financial responsibility. This also includes mobile drilling rigs when in the drilling mode. In addition, the meaning of "offshore facility" includes those facilities located in, on. or under the navigable waters or on the high seas and, perforce, includes facilities on the Outer Continenal Shelf, on submerged lands, and those considered to be deepwater ports.

Onshore facilities, as defined in section 101, are not required to maintain evidence of financial responsibility; however, they are still subject to the liability requirements of section 104.

This section also permits the Secretary some flexibility in establishing financial responsibility requirements by considering the sizes, types, locations, arrangements, and the degree of consolidation of various sections of a structure and various groupings of multiple facilities owned or operated by the same person or persons. and those operated under a joint venture. If an owner or operator is involved with more than one facility, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities. The section further clarifies the procedure for proportional shares of evidence of financial responsibility which must be shown by each participant in the ownership or operation of an offshore facility.

Failure to meet the requirements of financial responsibility subjects that person to the civil penalty provided in section 111(a).

In order to provide claimants with a full range of options for pursuing their claims, subsection (c) authorizes direct action against anyone providing financial responsibility for an owner or operator. The person providing financial responsibility can assert rights and defenses that the owner or operator could have asserted, and he can invoke the additional defense that the owner or operator caused the incident through willful misconduct. No other defenses can be invoked by the guarantor. The effect of limiting the guarantor's defenses is that the claimant does not become involved in collateral disputes between the owner or operator and the guarantor.

DESIGNATION AND ADVERTISEMENT

Section 106

This section sets out the procedure for claims that arise from an oil pollution incident. The first step in the process is the dissemination of information about the incident. The first person likely to have knowledge of an oil pollution incident is the person immediately responsible for the operation of the vessel or facility. Thus, the person in charge, or employer of such person in charge, must, under existing provisions of the Federal Water Pollution Control Act, immediately notify the Secretary of Transportation of an oil pollution incident. Failure to give that notice subjects the person to the criminal penalty provided for in existing law.

Upon receiving information from the person in charge or from any other source, the Secertary, under subsection (a)(1), initiates the claims process by designating the source of the oil pollution incident and by notifying the owner, operator, and guarantor involved of the designation. The source designation is important, because the owner, operator, and guarantor of the designated source will incur certain responsibilities under subsection (a)(2), if, within five days, he does not deny the Secretary's designation.

Subsection (a)(2) requires the owner, operator, or guarantor of a designated source to initiate advertisement of the designation and of the procedures by which claims may be asserted. The failure to deny a designation does not preclude a later denial of liability. It merely makes the owner, operator, or guarantor of the designated source responsible for setting into motion the applicable claims procedure.

Failure to carry out the advertisement repsonsibilities properly may result in the Secretary's undertaking those responsibilities, at the expense of the owner, operator, or guarantor.

Where there has been no denial of designation and the owner, operator, or guarantor advertises properly, the claims process may be asserted against any of those three parties. Subsection (b), however, provides for those instances where the Secrtary must notfiy potential claimants of the procedures by which claims may be brought against the fund. Those instances are situations where the owner, operator, and guarantor of the designated source have all denied the designation, where the Secretary has determined the source of the incident was a public vessel (as defined in section 101(f)), or where the source of the incident is unknown.

Subsection (c) sets out the advertising procedures to be carried out pursuant to requirements of subsection (a).

CLAIMS SETTLEMENT

Section 107

Economic loss claimed under section 103 may be compensated by payment from a responsible party (the owner, operator, or guarantor) or from the fund. Subsection (a) provides that claims shall be presented directly to the responsible party, except in those situations described in subsection (b). In accordance with subsection (b), claims shall be presented directly to the fund where the Secretary has advertised the claims procedure under section 106(b). This would occur under three circumstances: (1) where the owner, operator, and grantor all deny the source designation made by the Secretary; (2) where the discharge was from a public vessel; or (3) where the source of the discharge is unknown. Claims may also be asserted directly against the fund by owners and operators of the designated source who qualify under the standing provisions of section 103(b)(1). This means an owner or operator may assert a claim for removal costs under section 103(a)(1) directly against the fund, either where he has successfully asserted a defense to liability or where he is claiming removal costs which, taken with other claims, are in excess of his limitation of liability.

Subsections (c) and (d) provide for a second line of compensation. Subsection (c) allows for claims against the fund where attempts to reach a settlement with the owner, operator, or guarantor were unsuccessful. The preconditions for going to this second line of compensation are: (1) the denial of all liability for the claims by the person to whom the claim was presented, owner, operator, or guarantor; or (2) the passage of 60 days after presentment of the claim without any settlement, whichever occurs first. At this point, the claimant may elect to commence an action in court against the owner, operator, or guarantor, but once having decided to pursue the claim in court, the claimant cannot come back and assert his claim against the fund.

Subsection (d) also permits a claim against the fund in those instances where claimants are not adequately compensated by the owner, operator, or guarantor. Failure to receive full compensation could occur for a number of reasons. First, the owner, operator, or guarantor may have successfully invoked his limitation of liability under section 104(b) and the claim may exceed that limitation. The balance would be recoverable against the fund. For some other reason, such as insolvency, the owner, operator, or guarantor may not be able to satisfy all claims. Uncompensated claims could, therefore, be brought against the fund which serves as a backup for such situations.

Subsection (e) provides for regulations by the Secretary to prescribe documents to be transmitted to the fund in support of a claim which has first been presented against a spiller and is subsequently presented to the fund because it was not settled in a timely manner or because of a denial of liability or financial incapacity of the owner, operator, and guarantor.

Subsection (f) provides to those claimants who are proceeding against the fund, whether it be as first resort or second resort, the opportunity for review of the fund's actions by the Secretary in accordance with the Administrative Procedures Act. A review of the claim by the Secretary can only occur after the fund has denied liability or failed to settle the claim within 60 days. The occurrence of either of these two events also makes the claimant eligible to pursue a cause of action in Federal district court. The claimant, however, must choose his avenue of relief; once choosing to go to court, he may not then seek a review by the Secretary. A claimant who elects to take his dispute with the fund to the Secretary may still have the Secretary's determination reviewed at a later date by the district court, when he alleges that the Secretary's decision was arbitrary or capricious.

One of the primary policy objectives of this Act is to keep the overhead of processing claims to a minimum. The claims settlement procedure is designed to encourage informal negotiated settlements that will reduce expenses for claimants and to keep the administrative expenses of the Federal government at a minimum.

Subsection (g), aside from giving the Secretary the responsibility for establishing a uniform claims procedure, directs the Secretary to use private insurance adjusters or State agencies wherever possible. It does not appear that the Federal government will need a large permanent staff to administer the Act. Because the workload will be variable, unnecessary expense would result from having full-time claims adjusters on the Federal payroll. By giving the Secretary the authority to contract for these services, expert services should be available at a minimum expense to the Federal government. Authority for the Secretary to make advance claim payments and to audit the contract adjusters' activities is provided in subsection (g)(2). Payment of a single claim exceeding $100,000, two or more claims exceeding $200,000 in the aggregate, or settlment of a State claim by a State adjuster must first be cleared by the Secretary. Should contracted services prove to be inadequate, the Secretary is authorized to hire full-time Federal personnel to adjust and settle claims.

In those instances where a claimant is unable to reach a satisfactory settlement with the fund and thereafter presents his claim to the Secretary for review under subsection (f), the Secretary is authorized to delegate the review to a three-man panel. Subsection (h) sets out the general qualifications of the panel members; at least one member shall be qualified to run an adjudicatory hearing, and all shall be competent in assessing economic losses that may be claimed under the Act. Subsection (i) gives the Secretary the option of referring the dispute to an Administrative Law Judge instead of the three-man panel.

In the case of the appointment of a panel, or the referral to an Administrative Law Judge, each is required to be a resident of the judicial circuit where the damage claimed took place. The purpose of this section is to insure that the law judges and panel members hearing disputes are familiar with the locality involved. The usual powers required to conduct an administrative proceeding under the Administrative Procedures Act are conferred upon the Administrative Law

Judge and three-man panel. This includes the authority to compel appearances, testimony, and production of material. Enforcement of such authority is provided through the district court. The location of the hearings shall be the judicial district where the damage occurred.

Paragraphs (5) and (6) of subsection (i) provide for the review of decisions reached by the three-man panel or the Administrative Law Judge. Their decisions become final orders of the Secretary unless he elects to review them. These decisions are final orders within the meaning of the Administrative Procedures Act. As such, they are subject to review in the district court in accordance with the provisions of that Act.

Subsection (j) sets out rules of procedure that shall apply in the case of actions brought in court. Both plaintiffs and defendants are required to provide the fund with copies of complaints and pleadings. The fund may intervene as a matter of right, and may be dismissed from an action, upon its own motion, when either the owner, operator, or guarantor admits liability. Receipt of notice by the fund of an action shall give *res adjudicata* effect to any judgment, even though the fund chooses not to become a party. The sanction imposed on plaintiffs or defendants for failure to give notice to the fund is a loss of limitation of liability to which the defendant would otherwise be entitled under section 104(b) and the loss of any plaintiff's right to recovery from the fund for amounts not paid by the defendant.

Subsection (k) allows the plaintiff to join the owner, operator, or guarantor in an action brought against the fund, and the fund has a right to implead any other person who might be liable under the Act, pursuant to Rule 14 of the Federal Rules of Civil Procedure.

The statute of limitations for presenting claims or maintaining causes of action under this Act is set out in subsection (1). The claimant has three years after discovering an economic loss, described in section 103, to assert his claim. There are instances where it may take some time to discover economic loss resulting from oil pollution; hence, a claimant is given a generous amount of time within which to assert his claim. In order to allow for a final resolution of claims, however, an outside limit is placed on the assertion of a claim—six years after the date of the incident which resulted in the loss. The use of this type of statute of limitations permits enough passage of time to allow discovery of long-term loss caused by the oil pollution; yet the outer limit of six years prevents the assertion of stale claims.

SUBROGATION

Section 108

Subsection (a) provides subrogation for anyone who pays a claimant compensation under the terms of the Act. Effectively, this means that, if the fund pays a claimant for damages asserted under section 103, then the fund will stand in the shoes of that claimant and may assert any rights that the claimant has under the Act. Very often, this will mean that the fund will pay off a claim that is asserted against a discharger, and it will then be up to the fund to negotiate a settlement with the discharger or to litigate the claim. The result is to relieve a private claimant from protracted negotiations and litigation with the discharger, and thereby expedite the compensation of an injured claimant.

Under subsection (b), the Attorney General would be the party bringing action on behalf of the fund against anyone who is liable under this Act, or who is liable under any other law to the person compensated.

Subsection (c) sets out the specific items that the fund may recover against an owner, operator, or guarantor. The recoverable items depend on how the owner, operator, or guarantor responded to the claim.

The first class of owners, operators, and guarantors are those who either deny designation or who deny liability. If the fund proceeds against such parties, for compensation paid to claimants, those parties cannot contest the amount involved, except to the extent that it exceeds the limitation of liability available under section 104(b). Implicit in the fund's status as a subrogee is the defendant's right to assert against the fund any defense that he could have asserted against the claimant, pursuant to section 104(c).

Such defendants are also liable for interest for the period from the time the claim was initially presented to the defendant by the claimant, to the time that the fund is paid by the defendant. Excluded from the interest liability is the period, if any, from the time the claimant receives an offer from the fund, of the amount finally paid, to the time when the fund actually paid the claimant. Thus, the defendant is not penalized for the delay by the claimant in accepting the settlement offer of the fund. The defendant must also pay costs incurred by the fund, both in the proceeding by the fund against the defendant and in the proceeding by the claimant against the fund.

The second class of defendants consists of those who negotiated with the claimant but who were unable to reach a settlement within the 60-day period specified in section 107(c)(2). In the case of that type of defendant, where the fund pays to the claimant more than the defendant ever offered to the claimant, the defendant must pay what the fund paid, subject to the defendant's right to contest the validity of any part of the amount paid, which is in excess of the largest amount offered in settlement to the claimant by the defendant. Such a defendant must also pay the interest that the first class of defendants described above would have to pay and, as to costs, must pay only the costs incurred by the fund in the proceeding by and fund against the defendant.

In the case of the second class of defendants where the fund eventually pays an amount less than, or equal to, the largest amount offered by the defendant to the claimant, the fund shall recover that amount without reduction. The rationale is that, if the defendant was prepared to pay that amount to the claimant, and the fund settled, then the defendant has no reason to complain and should pay the full amount.

The fund shall also recover interest, running from the time the claim was presented by the claimant to the defendant to the date when the defendant offered the largest amount in satisfaction of the claim. Any such offer made within the specified 60-day period will relieve the defendant of any such interest liability. In any case, the defendant is liable for interest from the date upon which the claim was presented by the fund to the defendant to the date upon which the defendant made payment. A defendant who offers the fund an amount equal to that which is finally paid to the fund shall not be liable for interest during the period between that offer and the acceptance by the fund.

Subsection (d) provides for the distribution of the interest recovered pursuant to subsection (c). The interest recovered from the first class of claimants, those who deny designation or deny liability, shall be paid over to the claimant, but only for the period from the time the claim was first presented by the claimant, to the time the claimant was paid, less the period following the offer of the fund which was accepted by the claimant in settlement. This would leave in the fund the interest received for the period from the time the claimant was paid by the fund, to the time the fund was paid by the defendant. The same rule applies for those defendants of the second class who have failed to settle in 60 days, and who have offered less to the claimant than the fund eventually paid the claimant.

Costs and interests shall be recovered by the fund under subsection (e) without regard to any limitations of liability.

JURISDICTION AND VENUE

Section 109

The United States District Courts shall be the courts of first and exclusive resort for controversies arising under the Act. Claimants need not assert any particular amount in controversy in order for Federal jurisdiction to attach, nor do they have to assert diversity of citizenship in order to obtain Federal jurisdiction. Actions brought under the Act are Federal questions. Under subsection (b), the forum shall be located in the district either where the injury occurred or where the defendant resides or is found, or in the case of a business association, where it has its principal office.

PREEMPTION

Section 110

Subsection (a)(1) is designed to prevent duplicative sources of compensation for the economic losses described in section 103(a). Damages for the types of losses described in that section can only be recovered in Federal court, under this Act. Damages for other types of losses may be sought through means outside this Act, including through State courts. Thus, if a State wishes to provide damages for personal injuries resulting from oil pollution, it would be free to do so. The State is not preempted from providing a remedy for such an injury.

The purpose of the fund is to compensate those who suffer one or more of the economic losses listed in section 103(a), and who have not otherwise been fully compensated. Under subsection (a)(2), no one may be required to contribute to any other fund which has that same purpose. A fund set up to purchase pollution abatement equipment would not be duplicative of the fund established under this Act. Subsection (b) makes it clear that a State could impose a tax or fee to finance such a fund. This subsection does not totally preempt the field; it only preempts enactments which would duplicate the purpose of the fund established in this Act. Although a specific example of an area which is not preempted is provided in subsection (b), this does not imply that other areas are preempted. (See supra for additional commentary in Background and Committee Action.)

The preemption provisions in subsection (a) recognize exceptions provided in this Act. Therefore, subsection (a) should be read together with section 104(i) and subsections (b) and (c) of this section. Section 104(i) makes it clear that an owner or operator who is subjected to liability under this Act retains his rights under any other law to pursue a cause of action against a third party, including a governmental entity, whose negligence caused or contributed to the incident through which the owner or operator was subjected to liability. The same right is preserved to a guarantor who is subrogated to the rights of the owner or operator.

Subsection (c) makes it clear that the fund may bring an original cause of action to recover compensation paid to a claimant, even though the recovery may be for damages that are specified in section 103(a). For example, the fund may recover compensation paid to claimants because of an incident caused by the negligence of some third party, including a governmental entity. The fund would have to pursue its remedy under a common law or statutory right, such as, for example, under the Federal Tort Claims Act or the Public Vessel Act. Such a cause of action would be allowed under subsection (c).

PENALTIES

Section 111

Subsection (a) sets out certain civil penalty provisions for violations of the Act. Any person who fails to comply with the requirements of section 105(a)(1) or section 105(b)(1) or the regulations issued pursuant thereto, relating to the establishment and maintenance of evidence of financial responsibility, or who fails to comply with an appropriate order issued pursuant to the authority of section 105(a)(3), shall be subject to a civil penalty of not more than $10,000. The authority to assess and compromise the penalties involved is conferred upon the President or his designee in connection with the establishment and maintenance of evidence of financial responsibility for vessels, and upon the Secretary in connection with these requirements for facilities, as well as for violations involving denial or detention orders issued to vessels. Notice and opportunity for a hearing is required prior to the assessment of a penalty. The Attorney General may bring an action in the name of the fund to collect any penalty.

Additional penalties, both civil and criminal, relating to the collection and payment of fees to the fund, are contained in section 102(d)(3).

APPROPRIATIONS

Section 112

This section authorizes the appropriation of necessary funds to carry out the purposes of the title. The funds will be necessary in order to provide personnel to administer the Act, including the issuance of the necessary regulations and the implementation thereof, the supervision of the claims process, the handling of disputes, and other matters relating to general administration.

In addition, subject to specific budgetary authority as is contained in an appropriations act, the Secretary is authorized to incur indebtedness, in order to meet obligations of the fund, when the fund has insufficient moneys on hand, pursuant to section 102(f).

ANNUAL REPORT

Section 113

This section requires the submission of an annual report by the Secretary of Transportation to the Congress on the administration of the fund, with recommendations for legislative changes to improve management and administration of liability provisions.

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

Section 201

Upon enactment of this Act, authority is conferred immediately upon the applicable Federal officials to delegate necessary authority and to draft and issue regulations in order that these delegations and regulations may be in place by the time the substantive provisions of the Act go into effect, 180 days after enactment.

The section also provides that section 203, the severability section, is to be effective immediately. In addition, to provide assurance that there will be no time gaps in the requirements for financial responsibility, any regulations respecting financial responsibility issued under any other existing laws shall remain in effect until superseded by new regulations issued under this Act.

Section 202

Section 202(a) makes some clarifying amendments to section 204(b) of the Trans-Alaska Pipeline Authorization Act. Section 204(b), as written, provides that permit holders under the Authorization Act who cause oil pollution "within or without the right-of-way for permit area" shall be liable for the total cost of removing the pollutants. A literal reading of that section could suggest that a permit holder might be held liable for the total cost of removal for a spill occurring anywhere in the world. That clearly was not the intention of this section. Rather, it was intended to cover oil pollution in the vicinity of the pipeline right-of-way or permit areas. The amendatory language in this Act will make it clear that the removal liability of the permit holder extends only to activities relating directly to the trans-Alaska pipeline. Additional language was included to make the Trans-Alaska Pipeline Authorization Act removal liability provisions inapplicable in those situations where this Act applies. In all other instances, those provisions in the Trans-Alaska Pipeline Authorization Act relating to removal costs and liability remain in effect.

Section 202(b) repeals that subsection of the Trans-Alaska Pipeline Authorization Act which established liability and a compensation fund for damages caused by oil spills from vessels transporting oil from the pipeline terminus to ports elsewhere in the United States. It provides for a transfer to the new fund of the assets and liabilities of the Trans-Alaska Pipeline Liability Fund.

At the time of transfer, the Secretary of the Interior must certify the amount of outstanding claims. If the assets are greater than the claims, the excess will be credited against the fees which would otherwise be required under section 102(d), in proportion to the contributions of shippers to the TAPS fund. If the assets are less than the outstanding claims, an additional fee of two cents per barrel shall be imposed on such oil until that difference is made up. If the amount of claims settled is less than the amount certified, the difference shall be returned to the pipeline operator for rebate to the owners of the oil. A proviso is included, in the event the assets that have been transferred and remain outstanding can no longer be used as advance payments because the Comprehensive Fund has reached its statutory limit and fees are no longer collected, for the rebate of these excessive transferred funds.

Subsection (c) amends the Intervention on the High Seas Act, in order to make available to the Secretary, for intervention procedures authorized by that Act, the fund established by section 102 of this Act.

Subsection (d) amends the Federal Water Pollution Control Act, as amended, in the following particulars:

(1) Subsection (a) of that Act is amended by including a new definition of "person in charge". This corrects a deficiency and makes clear the original intent of that Act that the person who is charged with responsibility for reporting an oil pollution incident is the person who is in charge of the vessel at the time of the incident. That requirement is not intended to apply to any superior of the person with the immediate responsibility.

(2) Paragraph (5) of subsection (b) of that Act is amended to provide that the employer of the "person in charge" of a vesel or facility is also subject to imprisonment or a fine of up to $10,000 if the person in charge fails to immediately provide notification of a discharge. Besides making the employer subject to the penalties, this change insures that the employer of the person in charge is also entitled to the immunity provided in the last sentence of paragraph (5) of that Act.

(3) Clause (A) of paragraph (6) of subsection (b) of that Act is amended by adding the person in charge or his employer as parties against whom the civil penalty authorized in that paragraph may be assessed.

(4) Clause (B) of paragraph (6) of subsection (b) of that Act is amended like clause (A).

(5) Subsection (c) of that Act is amended by authorizing reimbursement to States from the fund established by this Act, for reasonable costs in removing discharges of oil, pursuant to the national contingency plan published by the President for the purposes of such removal.

(6) Subsection (d) of that Act is amended by making the fund established under this Act available for expenses in connection with actions taken relating to maritime disasters upon navigable waters or the high seas, when applicable.

(7) Subsections (f), (g), (h), (i), and (o) of that Act related to required reports of discharges, liability for removal costs, third-party liability, rights against third parties, recovery of removal costs, and liability for damages and preemption provisions are amended by deleting from the coverage of that Act oil as defined in this Act, the result being that in those amended subsections, the Federal Water Pollution Control Act will apply only to "nonpetroleum" oil and hazardous substances.

(8) Subsection (f) of that Act is also amended by extending the right of recovery of removal costs incurred under that Act from the person furnishing financial responsibility under section 105 of this Act.

(9) Subsection (g) of that Act is also amended by permitting access

by the government to the certificate of financial responsibility furnished for a third party in situations where that third party is also subject to action under that Act.

(10) Subsection (k) of that Act is amended by deleting from the revolving fund established by that Act any cleanup costs associated with the discharge of oil, as defined in this Act.

(11) Subsection (l) of that Act, involving administrative expenses, is amended by deleting from its coverage oil, as defined in this Act.

(12) Subsection (p) of that Act, relating to evidence of financial responsibility for vessels, is repealed. All requirements for evidence of financial responsibility are included within this Act. Section 105(a) of this Act requires such evidence to be provided in accordance with amounts of liability listed in section 104 of this Act for those vessels carrying oil as defined in this Act; that is, petroleum or petroleum products. Section 105(a) also requires such evidence to be provided in accordance with amounts of liability listed in sections 311(f) and 311 (g) of the Federal Water Pollution Control Act, as amended, for those vessels carrying nonpetroleum oils or hazardous substances.

Subsection (e) amends the Deepwater Port Act of 1974 by deleting various subsections related to oil discharge, liability therefor, liability fund establishment, claims procedures, financial responsibility certificates, cleanup costs, and numerous correlative matters, all of which are now covered by the provisions of this Act. It further redesignates provisions of that Act accordingly.

Subsection (f) amends the Outer Continental Shelf Lands Act, as amended, by repealing Title III of that Act and providing for the transfer of its Title III Fund assets and liabilities to the Comprehensive Fund under this Act.

Section 203

This section provides for severability of sections of this Act that may be held invalid.

COST OF THE LEGISLATION

Pursuant to the requirements of clause 7 of the Rule XIII of the Rules of the House of Representatives, the Committee estimates the maximum cost to the Federal Government upon enactment of the legislation at no more than $3,000,000 for the first fiscal year and $2,000,000 for each succeeding fiscal year.

Enactment of this legislation will replace the Offshore Oil Spill Pollution Fund provided under Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-373), which is presently provided for in the budget of the Department of Transportation.

In addition, the Secretary of Transportation is authorized to incur indebtedness to respond to claims where the fund is not sufficient to satisfy them. This indebtedness would later be recovered from the fund as it is replenished. No estimate is made for this contingency.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee has assessed the potential for inflationary impact and has concluded that much impact is minimal.

The only aspect of the bill that could have any effect would be the provision relating to the fee collected from oil, at a rate designated not to exceed three cents per barrel. The total of such fees is estimated at no more than $100,000,000 in Fiscal Year 1980 and $200,000,000 in Fiscal Year 1981, with collections in Fiscal Year 1981 and subsequent years depending upon the disbursements from the fund and the requirement that it be maintained at approximately a $200,000,000 level. This fee would have minimal impact in view of the present and expected costs per barrel of oil.

Some very minor impact could also flow from costs to owners and operators in establishing and maintaining necessary certification of financial responsibility for their potential liability under the bill. Any such costs could be expected to be borne ultimately by the consumer of oil products.

COMPLIANCE WITH CLAUSE 2(l)(3), RULE XI

With respect to the requirements of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives:

(A) No oversight hearings have been held during the present Congress on this subject.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 2(b)(2) of Rule X.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 85, as reported, pursuant to section 403 of the Congressional Budget Act of 1974. That report follows herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 14, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 14, 1979.

1. Bill No.: H.R. 85.
2. Bill title: Comprehensive Oil Pollution Liability and Compensation Act.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, May 9, 1979.
4. Bill purpose: The bill establishes an Oil Pollution Liability and Compensation Fund (OPLCF) for the purpose of providing the

necessary funds for oil spill damages which may occur in navigable waters of the United States and in the high seas. This liability and compensation fund is to be financed through fees of up to 3 cents per barrel of oil received at refiners or at terminals for export or import into the United States. The Secretary of the Treasury will determine the fee to keep the fund balance between $150 million to $200 million. The bill authorizes the Secretary of Transportation to borrow from the Treasury, subject to appropriations action, if amounts in the fund are not sufficient to meet obligations.

The bill also authorizes the appropriation of such sums as may be necessary for the general administration activities associated with handling the fund. The President's 1980 request for the OPLCF is $25 million, which includes a $7 million appropriation transfer from the Offshore Oil Pollution Compensation Fund.

5. Cost estimate: The bill provides the Secretary of Transportation with direct spending authority from the fund. The table below presents the estimated budget authority and outlays associated with this direct spending authority, as well as the estimated revenues.

	Millions
Estimated revenues:	
Fiscal year:	
1980	$180
1981	106
1982	50
1983	50
1984	50
Estimated budget authority:	
Fiscal year:	
1980	50
1981	50
1982	50
1983	50
1984	50
Estimated outlays:	
Fiscal year:	
1980	50
1981	50
1982	50
1983	50
1984	50

In addition, the bill authorizes funds for general administrative costs, which are subject to appropriation action. These costs are shown below:

	Millions
Estimated authorization level:	
Fiscal year:	
1980	$3.0
1981	3.2
1982	3.4
1983	3.7
1984	3.9
Estimated outlays:	
Fiscal year:	
1980	2.7
1981	3.2
1982	3.4
1983	3.6
1984	3.9

The costs of this bill fall within budget function 300.

6. Basis of estimate: The Oil Pollution Compensation Fund is expected to be self-supporting, with the Secretary of the Treasury authorized to modify the fee schedule for that purpose.

From data obtained from the Coast Guard, it was estimated (assuming enactment by October 1, 1979), that approximately 6.0 billion barrels per year of crude oil would be subject to the 3 cent per barrel charge, resulting in an annual revenue of $180 million, assuming the maximum charge. In addition, as specified in the bill, $14 million from the Trans-Atlantic Pipeline Liability Fund will be transferred to the OPLCF in fiscal year 1980. Two other funds, the Offshore Pollution Compensation Fund, and the Deepwater Port Liability Fund, as specified in the bill will also be collapsed into the OPLCF, but these funds currently do not contain any monies. The President's 1980 request contains $14 million for the existing Offshore Pollution Compensation Fund, which if appropriated would be transferred upon enactment of H.R. 85. Assuming that no major pollution incident occurs, and that an appropriate fee is charged to obtain $100 million in revenues in fiscal year 1981, it is anticipated that the $200 million ceiling will be obtained in the same fiscal year. A lower crude oil charge and funds received from the polluters will then sustain the funds until a major pollution incident occurs.

The $50 million in expenditures from the fund is for settlement of the estimated 22,000 claims resulting from oil spills. The other costs associated with this bill are the $3.0 million Department of Transportation costs which include personnel for promulgating regulations, administration and management of the fund and supervising claims settlement.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by James V. Manaro.
10. Estimate approved by James L Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

The Department of Transportation and the Enviornmental Protection Agency provided testimony with respect to H.R. 85 and H.R. 29 in lieu of a letter report. These bills have been the subject of reports from the General Accounting Office, Department of State, and the Council on Environmental Quality. An amendment to section 102 of H.R. 85 has been the subject of a letter from the Department of Treasury. H.R. 3441 was the subject of Executive Communication No. 1057 from the Secretary of Transportation.

The reports and communications mentioned above follow herewith.

[Ex. Comm. No. 1057]

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., March 20, 1979.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed herewith is a draft of a proposed bill to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, and for other purposes.

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. navigable waters, adjacent land, and other areas. This legislation is of high national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs require accelerated development of our offshore oil and gas resources, the use of tankers and the development of deepwater ports. This proposal would provide a broad range of protection against adverse economic impacts of the oil spills potentially associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. We have demonstrated our ability to reduce oil pollution despite a marked increase in the transportation of oil. Yet, as the incidents involving the *Argo Merchant*, the *Olympic Games* and the *Amoco Cadiz* demonstrate, oil spills continue to occur; and one-third of the oil spilled is from unidentifiable sources, where compensation cannot be obtained under existing law. Inconsistency among current Federal and State liability laws along with a multiplicity of compensation funds at both levels of government, create severe confusion and impose unnecessary burdens on oil producers, taxpayers, and consumers through duplication of administrative costs and fee payments.

During the 94th Congress, the House Merchant Marine and Fisheries Committee held hearings on oil pollution liability and compensation. When President Carter took office, he directed an executive task force to consider a far-reaching legislative and executive program to prevent oil spills, to combat them effectively when they occur, and to compensate those damaged by oil pollution. The task force examined the various bills which had been introduced in both the 94th and the 95th Congress during its study and proposed that an administration bill be submitted as a part of a comprehensive response to ocean pollution. While the 95th Congress was able to reach agreement on many issues related to oil pollution liability and compensation, final passage of legislation was not achieved.

The past efforts and extensive deliberations of Congress in formulating a comprehensive oil pollution liability and compensation scheme were carefully considered in drafting this bill. The proposed bill would establish strict liability for oil pollution damages from identifiable sources and provide strong economic incentives for operators to prevent oil spills. Equally important, the bill would provide relief for oil related environmental damages which in the past have gone uncompensated. For example, all State governments would be able to claim compensation for damages to natural resources under their jurisdiction. In addition to replacing a patchwork of overlapping, inconsistent Federal and State laws and defining liability for oil spills, the proposed legislation would establish a uniform system for settling claims that assures that all just claims are compensated. The leigslation provides for a fund of up to $200 million derived from a fee not to exceed three cents per barrel on imported and domestically produced oil.

The bill would also provide compensation for economic losses resulting from pollution damage to natural resources for claimants who harvest marine life resources. The Administration bill submitted during the 95th Congress would have provided somewhat greater coverage for consequential economic losses from oil pollution, including compensation to State and local governments for loss of tax revenues, and loss of income due to injury or destruction of property or natural resources if the claimant derived 25 percent of his income from the use of the damaged property or resource. After careful consideration of this issue, particularly with respect to the lack of a clear definition of the extent to which recovery would be available under these provisions, the Administration has determined that this coverage should not be provided under the Superfund legislation at this time. Therefore, we recommend that coverage for consequential damages be limited to that category of claimants who depend directly, in the normal course of their business, on the opportunity to harvest marine life resources.

While enactment of this legislation would mark the closing of a major gap in a system of preventing and compensating for oil pollution damage, it is by no means the final step in this Administration's efforts to address the problems of compensation for pollution from hazardous substances and materials which can endanger our citizens and our environment. An interagency task force is currently involved in an intensive effort to determine an appropriate compensation and liability scheme for these other substances and materials. An important segment of this effort is to consider the proper relationship between that scheme and the oil pollution compensation bill we are submitting with this letter (including whether or not the two schemes should be tied together). The Administration expects to develop necessary legislation directed to this subject for submission to the Congress in the near future.

Finally, we would like to be clear that submission of this oil pollution compensation bill is not intended, and its enactment should not be construed, as affecting the legislative history of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) or the case law that has been developed under that statute. We have sought to assure conformance between the provisions of this bill and the provisions of the FWPCA wherever appropriate so as to prevent litigation over issues which have already been resolved.

It must be emphasized that this "superfund" bill in no way affects the Federal Government's authority under section 311 of the FWPCA to prevent and clean up spills, and to penalize spillers.

The Administration urges the Congress to adopt this proposed legislation, which was developed only after a thorough and far-reaching consideration of the problems involved. I am convinced that this proposal will provide a comprehensive compensation system which will work with maximum flexibility and minimum governmental involvement. I therefore ask that you lay this proposal before the House of Representatives. A similar proposal has been submitted to the Senate.

The Office of Management and Budget advises that this legislative proposal is in accord with the President's program.

Sincerely,

BROCK ADAMS.

[COMMITTEE NOTE: The draft bill attached is now H.R. 3441, as introduced.]

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 2, 1979.

B-146333.

Hon. MARIO BIAGGI,
Chairman, Subcommittee on Coast Guard and Navigation Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: On January 15, 1979, you along with 26 other Congressmen introduced a bill, H.R. 85, 96th Congress, which would provide for a comprehensive system of liability and compensation for oilspill damage and removal costs. The bill would establish a Comprehensive Oil Spill Liability Fund to help finance such costs. On the same day Congressman Studds introduced a similar bill, H.R. 29. Both bills contain requirements for auditing and reporting by our Office which we believe are unnecessary and undesirable.

Subsection 102(g) of both bills provide that:

"The Comptroller General shall audit all payments, obligations, reimbursements, or other uses of the fund, to assure that the fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the fund and a final report two years after the establishment of the fund. The Comptroller General shall thereafter audit the fund as appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection."

The requirements of subsection 102(g) for General Accounting Office audits and reports are unnecessary. Our Office already has sufficient authority to make such audits. Also, alternative methods exist for congressional committees to obtain needed information with less risk of precluding or disrupting other work by our Office.

Under the Budget and Accounting Act of 1921, as amended (31 U.S.C. 53), the Comptroller General has authority to investigate and report on "all matters relating to the receipt, disbursement, and application of public funds." The Accounting and Auditing Act of 1950, as amended (31 U.S.C. 67), requires the General Accounting Office to audit "the financial transactions of each executive, legislative, and judicial agency," except as otherwise specifically provided by law. Section 204 of the Legislative Reorganization Act of 1970, as amended (31 U.S.C. 1154(a)), directs the Comptroller to "review and evaluate the results of Government programs and activities carried on under existing law." In our opinion, this existing legislation gives our Office adequate authority to make the audits that would be required by subsection 102(g).

If enacted, the specific auditing and reporting requirements of subsection 102(g) would draw heavily on our already limited staff resources, disrupt our audit plans, and possibly preclude our undertaking other important work. In fact, such requirements might preclude us from timely performances work specifically requested by your subcommittee or other congressional committees because the available staff necessarily would be involved in auditing transactions of the Comprehensive Oil Spill Liability Fund.

As you know, committees having jurisdiction may request our Office to perform desired reviews and, under section 204 of the Legislative

Reorganization Act of 1970, as amended, we will perform such requested reviews. We believe such an arrangement, in lieu of a specific legislative requirement, would be mutually advantageous because it would permit us, through discussions with the committee, to reach agreement regarding the scope and report timing for our initial audit efforts and thus to concentrate on the matters of greatest concern to the subcommittee. Accordingly, we recommend that the requirements for the General Accounting Office audits of and reports on the Fund be deleted from the bills.

The auditing and reporting provisions of subsection 102(g) are undesirable because they would require our Office to undertake work which should be performed by the Department of Transportation's Office of Inspector General. Subsection 102(g) states that the purpose of the audits would be "to assure that the fund is being properly administered and that claims are being appropriately and expeditiously considered." We believe these are essentially management responsibilities that should be carried out by the Department of Transportation rather than by our Office. Therefore, if the subcommittee considers it necessary for the Congress to have reports on the administration of the Fund during its initial years of operation, we recommend that section 102(g) be revised to require the Department's Inspector General to make the reports.

In a somewhat unrelated matter, we would like to express concern over certain provisions contained in S. 2083 of the 95th Congress—a bill similar to H.R. 85 and H.R. 29 which failed enactment. This bill contained provisions not included in H.R. 85 and H.R. 29 that would have required (1) our Office, the Coast Guard, and the Environmental Protection Agency to study incentives for safer operations of vessels and facilities to reduce discharges of oil or hazardous substances and measures to prevent or avoid such discharges and (2) our Office, in consultation with the Environmental Protection Agency, to investigate the necessity for providing assistance in emergencies caused by the release of pollutants.

Legislative mandates that our Office participate in such studies and investigations as required by S. 2083 cause us considerable concern because of their potential impact on our capability to perform other work. Also, such provisions might result in requiring our Office to devote resources to matters on which we already have performed work or to matters which properly should be considered as management functions for which the administering Federal agencies have responsibility.

Our Office has performed or is in the process of performing several assignments in those areas, including—

"Analysis of Future Coast Guard Resource Needs for Responding to Oilspills" (CED-79-32, Jan. 12, 1979);

"Coast Guard Response to Oilspills—Trying To Do Too Much With Too Little" (CED-78-111, May 18, 1978);

"Tankers and Oil Transfer Operations on the Delaware River and Bay" (CED-77-124, Aug. 23, 1977);

"Total Cost Resulting From Two Major Oilspills" (CED-77-71, June 1, 1977), Analysis of the activity of the oil pollution fund (printed by the Subcommittee on Government Activities and Transportation, House Committee on Government Operations, in its March 1977 hearings on Coast Guard efforts to prevent oil pollution caused by tanker accidents);

Coast Guard efforts to assure safety of commercial vessels in U.S. waters (assignment in process); and

Analysis of Coast Guard's marine aids to navigation program (assignment in process).

Although the cited reports were addressed to other congressional committees in response to their specific requests, copies were furnished to your subcommittee.

As you are aware, we have worked very closely with your subcommittee by (1) responding to specific requests and (2) assuring that our self-initiated assignments are of interest to you. We believe that this aproach gives us enough staffing flexibility to meet the needs of your subcommittee and other congressional committees.

We mentioned our concern over the provisions contained in S. 2083 solely in the event they should be reintroduced as part of the legislative process. Your consideration of these views as well as those on H.R. 85 and H.R. 29 would be appreciated.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., February 9, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MR. MURPHY: The Council on Environmental Quality has received your request for comment on two bills, H.R. 29 and H.R. 85, to provide a comprehensive system of liability and compensation for oil spill damage and removal costs. The Council strongly supports the establishment of such a system and appreciates the work of your committee over a number of years to achieve it. Because the Administration is just now developing proposed legislation for the same purpose, we prefer to reserve comment on specific bills for the present. Our commitment to the objectives of these bills continues, and we look forward to working with your committee to achieve them.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration.

Sincerely,

CHARLES WARREN, *Chairman.*

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., May 9, 1979.

Hon. MARIO BIAGGI,
Subcommittee on Coast Guard and Navigation,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department of the Treasury would like to take this opportunity to express its views concerning Mr. Young's proposed amendment to section 102 of H.R. 85, a bill entitled the "Comprehensive Oil Pollution Liability and Compensation Act." The fund which would be created by this bill is commonly known as the "Superfund."

This legislation would establish a comprehensive oil spill liability fund to pay costs and damages resulting from oil spills. The Superfund would be raised principally from a per-barrel fee imposed on oil as authorized by the bill. Section 102(e) would authorize the Secretary of the Treasury to invest excess amounts in the fund in interest-bearing obligations of the United States.

The proposed amendment would revise section 102(e) to authorize the Secretary of the Treasury to invest excess amounts in the fund in interest-bearing certificates of deposit issued by United States banking institutions. Deposits would be required to be allocated and withdrawn proportionately among banking institutions located in the States in which the fees are levied. The Secretary of the Treasury would designate procedures for the allocation of deposits and eligibility standards for banking institutions to receive the deposits.

The Department of the Treasury is strongly opposed to the proposed amendment. Investment of Superfund moneys in the certificates of deposit would be a departure from long-standing policies covering the investment of funds administered by Federal agencies, including a policy against investment in the private sector. The Department is also deeply concerned with the undesirable precedent which would be established for investing other Federal receipts in certain States simply because the receipts originated in those States.

Further, the administration of the provisions of the amendment would be cumbersome. The system required by this proposal would necessitate handling several depositors in several States equally with respect to all deposits and all withdrawals. New systems would be required in the Treasury at significant additional cost to implement the required allocation. No assurance exists that an equitable system could be instituted. Problems in developing an equitable system arise because of such factors as the location of recipient banks, the amount of fees collected in each State, and the distortion which may result from the annual apportionment calculation required by the amendment.

In these circumstances, the investment of moneys from the Superfund should not depart from the general policy of limiting the investment of Federal moneys to obligations of the United States.

The Office of Management and Budget has advised that there is no objection fromt he standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

DAVID R. BRENNAN,
Deputy General Counsel.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries.

DEAR MR. CHAIRMAN: You have asked for the views of the Department of State on two bills which would provide comprehensive systems of liability and compensation for oil-spill damage and removal costs, H.R. 29 and H.R. 85.

As you know, H.R. 3441, the Administration bill dealing with this subject, was introduced by request on April 4, 1979. H.R. 3441 was the result of intensive interagency work in the Administration which took into account issues which surfaced during the last Congress' consideration of "Superfund" legislation.

The Department of State fully supports the Administration bill, and defers to the Department of Transportation as to technical differences between H.R. 3441 and H.R. 29 and H.R. 85.

The Department would also simply note two issues with foreign policy implications. First, the provisos to section 103(b)(4) of H.R. 3441 have been drafted to retain the present remedies for residents of Canada with respect to oil transported through the Trans-Alaska Pipeline. The Administration feels it is quite important to retain those remedies, in view of assurances we have heretofore given the Canadian government. Secondly, the Department of State shares the general Administration view with respect to preemption as expressed in section 110 of H.R. 3441. The burden upon oil shippers inherent in providing for differing State and Federal requirements would pose an unnecessary expense on the movement of oil, and, in extreme circumstances, would impede such movement.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary
for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 204 OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT (87 STAT. 586)

SEC. 204. (a)(1) Except when the holder of the pipeline right-of-way granted pursuant to this title can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives. Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to $50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of $50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

(5) Where the State of Alaska is the holder of a right-of-way or permit under this title, the State shall not be subject to the provisions of subsection 204(a), but the holder of the permit or right-of-way for the trans-Alaskan pipeline shall be subject to that subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in he construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal. State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.*

[(c) (1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT
(88 STAT. 10)

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

SEC. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that act) taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.

SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED (86 STAT. 862; 33 U.S.C. 1321)

SEC. 311. (a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of

this Act, which are caused by events occurring within the scope of revelant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes any individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway;

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party**[.]***;*

(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility.

(b)(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone or which affect natural resources belonging to, appertaining to, or under the exclusive management au-

thority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, [or person in charge] *person in charge, or employer of such person in charge*, of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, [or person in charge] *person in charge, or employer of such person in charge*, of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, [or person in charge] *person in charge, or employer of such person in charge*, of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless [the owner or operator] *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or person in charge,] *person in charge, or employer of such person in charge*, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge*, to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, [or person in charge,] *person in charge, or employer of such person in charge*, such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act.

(E) Civil penalties shall not be assessed under both this section and section 309 for the same discharge.

(c)(1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances *and imminent threats of such discharges to the appropriate State and Federal agencies;*

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section *or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate*, for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection *or under the Intervention on the High Seas Act* (*or the Convention defined in section 2*(*3*) *thereof*) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.] *Any expense incurred under this subsection or under the Intervention on the High Seas Act* (*or the Convention as defined in section 2*(*3*) *thereof*) *shall be reimbursed from the fund established under subsection* (*k*) *of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection* (*k*) *of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection* (*f*) *of this section.*

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f)(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil (*other than petroleum, crude oil, or any fraction or residue there-*

from) or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed, *in the case of an inland oil (other than petroleum, crude oil, or any fraction or residue therefrom) barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil (other than petroleum, crude oil, or any fraction or residue therefrom) or hazardous substances as cargo, $250,000), whichever is greater*, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel, *or against the person furnishing financial responsibility under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act*, in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed *$50,000,000*, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Gov-

ernment, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed *$50,000,000*, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Where the owner or operator of a vessel (other than an inland oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) barge) carrying oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substances in bulk, from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, not withstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) barge $125 per gross ton of such barge, $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party *or against the person providing financial responsibility for that party under section* 105 *of the Comprehensive Oil Pollution Liability and Compensation Act*, in any court of competent jurisdiction to recover such removal costs.

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance.

(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).

(j)(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such chargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance after notification of a violation, shall be considered by the President.

[(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.**]**

(k) There is authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to main-

tain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section respecting such discharges shall also be deposited in this fund for these purposes. All sums appropriated to, or deposited in, the fund shall remain available until expended.

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section**[.]** *respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.*

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o)(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

[(q)](*p*) The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f) (2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

[(r)](*q*) Nothing in this section shall be construed to impose, or authorize the imposition of any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

DEEPWATER PORT ACT OF 1974 (P.L. 93–627; 88 STAT. 2126)

* * * * * * *

SEC. 4. * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 18(1) of this Act;] *section 105 of the Comprehensive Oil Pollution Liability and Compensation Act;*"

SEC. 18. * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

[(c)](*b*) (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licenses of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c) (2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to sub-

section (f) of this section] *fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000 whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund"), as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect for the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be perscribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[(h) (1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator of such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(l) The Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be

harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT OF 1978

(Public Law 95–372)

[TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

[DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301 (a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "Oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

[(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

[(C) the presence of oil in or on territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific

Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs:

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner:

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of ttile 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e) (1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2) (C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2) (F), by the Federal Government and any State or political subdivision thereof;

[(6) under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(6) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35.000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

> [(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or
>
> [(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of ths title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial reponsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusion.

The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and he Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys fees; and

[(2) for a claim presented to the Fund pursuant to section 307(c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c) (1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interests and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

[PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

[PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in the paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken itno consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, wiithout fiscal year limitation; in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

96TH CONGRESS *2d Session*	HOUSE OF REPRESENTATIVES	REPT. 96-172, Part 2

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

MAY 16, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JOHNSON of California, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 85 which on January 15, 1979, was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation.]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, having considered the same, report favorably there on with an amendment and recommend that the bill as amended do pass.

The amendment strikes all after the enacting clause of the bill and inserts a new text which appears in bold face roman type in the reported bill.

INTRODUCTION

H.R. 85, a bill to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, was jointly referred to the Committees on Merchant Marine and Fisheries and Public Works and Transportation. Both Committees have held extensive hearings on the subject matter of the legislation, both in the 96th and preceding Congresses, and have given it extensive and very careful consideration.

The Committee on Public Works and Transportation agrees with the need for a comprehensive scheme to provide for recovery of damages caused by oil spills, recovery of cleanup costs, and establishment of liability and requirements for financial responsibility. The Committee believes there is a similar need with regard to certain hazardous substances which are discharged into navigable waters, and accordingly added a new Title III to H.R. 85 which addresses this need in essentially the same fashion as oil spills are addressed in Title I. The Committee notes that the response effort with respect to spills of oil and hazardous substances has been carried out under a single Federal statutory authority since 1972 when section 311 of the Federal Water Pollution Control Act Amendments was enacted. Under section 311, a Federal cause of action with respect to removal costs of certain discharges of hazardous substances was created and the National Contingency Plan, originally established by section 11 of the Water Quality Improvement Act, was expanded to include hazardous substances. In light of this history, the committee believes that it is appropriate to address the liability, cleanup and economic damage recovery issues associated with spills of designated hazardous substances in the same manner as Title I of H.R. 85 addresses for spills of oil.

With the exception of conforming and technical amendments made necessary by the addition of Title III, and a small number of minor amendments, the Committee concurs in the oil spill provisions of H.R. 85 as reported by the Committee on Merchant Marine and Fisheries. A full explanation of that Committee's action is set forth in House Report 96-172, Part I, and need not be repeated here. A description of the amendments adopted by the Committee on Public Works and Transportation follows.

AMENDMENTS TO TITLE I

Section 104(d) provides that the Secretary of the Department in which the Coast Guard is operating shall issue regulations establishing limits of liability, up to $50 million, for various classes of facilities, including onshore facilities. This provision is amended to provide that in no case shall such a limitation of liability be less than $2 million for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons. The amendment also requires an owner or operator of such a vehicle to establish and maintain evidence of financial responsibility in such amounts as the Secretary shall establish, but in no event less than $2 million. The purpose of this amendment is to insure that minimum liability and financial responsibility requirements are placed on trucks carrying oil in bulk so that adequate resources exist to cover liability associated with spills of oil into navigable waters.

Section 101(x) of H.R. 85 defines the term "owner" as any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who, without participating in the management or operation of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility. This provision is amended to exclude from the definition of owner a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters such vessel or facility to any other person with whom such person is not otherwise affiliated. The term "affiliated" has been added to the defined terms in the Act at section 101(y) to mean a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person. One of the practices followed in securing the construction of a vessel is that of an owner/lessor having a vessel built to the specifications of a lessee with whom a lease agreement has been executed. Where the owner/lessor does not exercise control over the operation or maintenance of the vessel and is not affiliated with the lessee, as defined in new section 101(y), the Committee considers it inappropriate to place liability and financial responsibility requirements on the owner/lessor.

Section 103(d) provides that if the number of members of a class in a class action brought under the provisions of subsection (b)(7) of subsection (c) of that section exceeds 1,000, publication of notice of the action in local newspapers of general circulation in the areas in which the damaged persons reside shall be deemed to fulfill the requirements for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure. Because the question of adequate notice is fundamentally one of due process and because the U.S. Supreme Court has held, in decisions such as *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950) and *Eisen* v. *Carlisle & Jacquelin,* 417 U.S. 156 (1974), that publication in a newspaper does not constitute adequate notice where members of a class are known or reasonably identifiable, the committee amendment deletes section 103(d) on the ground that it may be unconstitutional.

Section 105(a)(1) is amended to make it clear that the evidence of financial responsibility which must be furnished under Title I is that amount which is sufficient to satisfy the maximum amount of liability imposed by H.R. 85. Finally, section 105(a) is further amended to delete the reference to subsection (f) of section 311 of the Water Pollution Control Act relating to defenses to liability. Subsection (f) is rewritten in Title III and no longer relates to financial responsibility. The reference to it in section 105(a)(1) is, therefore, no longer appropriate.

The committee notes that, when an action is brought under Section 108(b) against a governmental entity, it is intended that the liability of that entity be strictly construed. During consideration of H.R. 85 by the Subcommittee on Water Resources, an amendment was offered to clarify that the liability of a government entity, which failed to act in a timely manner, for example, to approve a maintenance dredging action and thereby contributed to causing a spill of oil into the waters of the United States, should be strictly construed. The position of the committee, with respect to H.R. 85, is that the liability of a governmental entity should be strictly construed and that a statutory clarification is unnecessary to accomplish this result. It was with this understanding that the amendment was withdrawn.

AMENDMENTS TO TITLE II

A number of amendments to Title II were adopted in order to insure its conformance with the new Title III. These are as follows.

Section 202(d)(6) provides that any expense incurred under Section 311 or under the Intervention on the High Seas Act shall be reimbursed from the fund established under section 311(k) or the fund established under section 102 of H.R. 85. The fund provides that any expense incurred thereunder for which reimbursement may be had from the fund established under section 311(k) shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of section 311. The reference to subsection (f) is deleted as inappropriate because subsection (f) is rewritten in Title III to cover claims for damages for economic losses.

Subsections 202(d)(7) through (d)(10) are deleted as being unnecessary in view of the provisions included in Title III relating to financial responsibility and establishment of a hazardous chemical fund.

Subsection 202(d)(11) is amended to provide that subsection 311(l) of the Federal Water Pollution Control Act is further amended by striking out the reference to subsection 311(i) which authorizes the utilization of the section 311(k) fund for the recovery of cleanup costs by an owner or operator. Recovery of such costs for spills of petroleum and crude oil is provided in section 103 of Title I. Recovery for spills of other types of oil and hazardous substances is provided for in Title III. Subsection 202(d)(12) would repeal subsection 311(p) of the Federal Water Pollution Control Act which, as amended by H.R. 85, as reported by the Committee on Merchant Marine and Fisheries, would establish requirements of financial responsibility for dischargers of hazardous chemicals. In view of the addition of Title III, the retention of financial responsibility in section 311 for dischargers of hazardous chemicals is appropriate.

In addition, the Committee adopted two other amendments to Title II. A new subsection 202(e) is added which amends section 404 of the Federal Water Pollution Control Act by adding a new subsection which provides that the Secretary of the Army shall make any determination with respect to those navigable waters to which the provisions of section 404 apply.

The Secretary of the Army and the Corps of Engineers have been charged since 1899 with the protection of the navigable waters of the United States. Under the Rivers and Harbors Act of March 3, 1899, no one may perform any work in a navigable water including dredging or filling or discharging into a waterway unless the work is recommended by the Chief of Engineers and approved by the Secretary of the Army. For many years this authority was limited in scope and exercised only in the interest of protecting navigation. However, the exercise of that authority broadened substantially. First, the definition of what is a navigable water of the United States has been expanded by the courts. Second the courts had upheld the responsibility and duty of the Corps to consider all matters affecting the general public interest in the permitting process. These considerations include the environment, fish and wildlife, economics, flood control, and navigation. As a result, the Corps' regulatory program under the 1899 Act had expanded considerably in jurisdictional scope.

When the amendment to the Federal Water Pollution Control Act was drafted in 1972, the Senate Public Works Committee reported a bill which treated the disposal of dredged material as any other pollutant. A floor amendment added special criteria applicable to dredged material. The House bill, which was later adopted into law, went further by specifically designating the Secretary of the Army, rather than the Administrator of EPA, as the permit issuing authority for a separate permit program. Pursuant to Section 404(b) of the Act, the Secretary, not the Administrator, is required to specify disposal sites for the discharge of dredged or fill material in waters of the United States. The House-Senate conferees were aware that the Corps was already exercising a regulatory program for the discharge of dredged material which included the authority to make determinations as to the extent of jurisdiction for purposes of implementing that program. That authority to determine the jurisdictional limits, inherent in the authority to grant permits for the discharge of dredged and fill material, was acknowledged and re-affirmed in the new regulatory program established by section 404.

In the 1972 Act, the Administrator of EPA was given the authority to bring enforcement actions for violation of the Water Pollution Control Act. Because of the dichotomy between enforcement authority claimed by EPA and the Secretary's authority to establish the legal jurisdiction of the section 404 regulatory program, the Congress in 1977 added section 404(s). This section granted authority to the Secretary to exercise enforcement authority over activities occurring in navigable waters to the same extent that the Administrator exercises those functions for purposes of the Section 402 NPDES program. This amendment was adopted in recognition of the already existing authority in the Secretary to bring enforcement action against authorized discharges of dredged or fill material through section 13 and 17 of the River and Harbor Act of 1899.

In 1977 Congress also exempted certain activities from the permit requirements of Section 404. The Secretary was given authority to exempt certain activities from the Section 404 permit program and the Administrator was given similar authority with regard to section 402. This dual approach recognized the individual permitting responsibilities created by the Congress in the Secretary and the Administrator.

With regard to subsection(f), the Committee notes that subsection E of that subsection exempts construction or maintenance of farm roads or forest roads, among other things, where such roads are constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The best management practices referred to in subsection E are those which relate solely to the construction and maintenance of the road itself and do not include best management practices associated with activities which the road may serve or make possible such as timber production and harvest practices.

These authorities vested in the Secretary, acting through the Chief of Engineers, have been exercised for seven years. In January 1979 the U.S. District Court for the Western District of Louisiana, in the case of *The Avoyelles Sportsman's League* v. *Alexander,* Civ. No. 78-1428, ordered the U.S. Government to establish the extent of navigable waters on the Long Tract in Avoyelles Parrish, La. At that time the jurisdictional determination made by the Administrator, rather than the Secretary, was presented to the Court as the U.S. Government's position. Last fall the Attorney General issued an opinion that specifically holds that the structure and intent of the Clean Water Act gives the Administrator the final administrative responsibility for construing the term "navigable waters" and for construing section 404(f). By implication the Attorney General's opinion also casts legal doubt on both the authority of the Secretary to determine which activities constitute point source discharges of dredged material and his authority to bring Section 404 enforcement actions. In response, a Memorandum of Agreement was signed by the Corps and EPA on April 23, 1980. This agreement only attempts to divide the authority to determine jurisdiction. It does not address all of the difficulties arising from the Attorney General's Opinion. Even in its limited form, legal doubts have been raised concerning the memorandum, in that it may constitute an illegal delegation of authority since certain final determinations of jurisdiction are given to the Secretary by the Administrator without recourse of administrative appeal to the Administrator. The Committee amendment re-affirms the original intent in passing section 404 in 1972 and amending that section in 1977. This amendment is intended to have the effect of reversing those Administrative actions which have diminished regulatory authorities inherent in the Secretary before 1972 and expressly given to the Secretary to implement the section 404 program in 1972 and 1977. These include the power to delineate waters of the United States, the authority to bring section 404 enforcement actions, the authority to determine which activities are subject to the provisions of section 404 and the authority to define the scope of the section 404(f) exemptions from those provisions.

A new section 203 is added which provides that no part of any monies in the comprehensive oil-spill liability fund shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency. The purpose of this amendment is to insure that the fund will not be used to avoid the normal authorization and appropriation processes involved in the hiring of agency personnel.

TITLE III

Title III of H.R. 85, as reported, establishes a comprehensive scheme for the payment of cleanup costs associated with discharges of hazardous chemicals into navigable waters, compensation for economic losses caused by such discharges and establishment of liabilities for such discharges, cleanup costs, and economic costs.

Section 301(a) amends subsection (a) of section 311 of the Federal Water Pollution Control Act by adding a number of definitions of terms used in Title III. The definitions follow those contained in Title I with the exception of the definition of the term "supplier" as that term is used in new subsection (k) of section 311 relating to the collection of fees from which the hazardous chemicals fund is constituted. The intent of the definition of "supplier" is to insure that with respect to any person as that term is defined in section 311 of the Federal Water Pollution Control Act, separate fees are not necessarily assessed at each stage of a manufacturing process as a substance moves through a number of processes to a person's final product.

If the production process is undertaken by one company and that process involves the production and use as an intermediate product of a listed substance on one site or on two or more sites which are physically adjacent—that is, connected by a common land boundary—only one fee is to be collected under each of paragraphs 2, 3, 4 and 5 of new subsection 311(k), either on the end product to the extent that it is included in one of the referred paragraphs, or on one intermediate product which is used in the process and included in the referenced paragraphs, if the end product is not itself listed in these paragraphs.

Section 301(b) amends subsections (f), (g), (h) and (i) of section 311 of the Federal Water Pollution Control Act to provide for definitions of claims for damages for economic losses which may be made, liability provisions, payments from the hazardous chemicals fund, and indemnification.

New subsection 311(f) provides that claims for damages for economic losses, incurred on or after the effective date of Title III of H.R. 85, and arising out of or directly resulting from the discharge of hazardous substances, may be asserted for:

(1) Removal costs; (2) Injury to, or destruction of, real or personal property; (3) Loss of use of real or personal property; (4) Injury to, or destruction of, natural resources; (5) Loss of use of natural resources; (6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources. (The claimant must derive 25 percent of his earnings from activities which utilize the property or natural resources) and; (7) Loss of tax revenue for a period of one year due to injury to real or personal property.

A foreign claimant may assert a claim to the same extent as a United States claimant if the pollution occurs in the waters of a foreign country of which the claimant is a resident, the claimant is not otherwise compensated, the substance was discharged from a vessel in United States navigable waters or discharged in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act, and the foreign country provides a comparable remedy for United States claimants.

New subsection 311(g) provides that the owner and operator of a vessel or of a facility that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance or poses a threat of such a discharge shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under new subsection (f). Limitations of liability are as follows: (1) for a vessel other than a ship or inland oil barge, $150 per gross ton; (2) for an inland oil barge, $150 per gross ton up to a maximum of $150,000; (3) for a ship, $300 per gross ton up to a maximum of $30 million; (4) for a deepwater port, $50 million; (5) for an offshore facility operated under authority of the Outer Continental Shelf Lands Act, removal costs plus $50 million. (The Secretary of Transportation may reduce the liability for these facilities to an amount not to exceed $35 million if he determines that the greater limitation will have a significant adverse impact on small businesses or a significant anti-competitive impact); (6) in the case of other facilities, $50 million or such lesser limit as the Secretary may establish by regulation, taking into account the size, type, location, storage and handling capacity of the facility.

There is no liability to the extent that the pollution incident is caused: (1) by an act of war, hostilities, civil war, or insurrection: or, (2) a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care. There is also no liability to the extent that the incident is caused by an act or omission of a person other than the claimant or the owner or operator. Where a claimant's gross negligence or willful misconduct causes in whole or in part the incident or the economic loss, he cannot recover. Where the claimant is simply negligent, the liability is reduced to the extent that the incident or economic loss is caused by his negligence.

New subsection 311(h) provides that the fund is liable without limitation for all damages for which a claim may be asserted under subsection (f) to the extent that the loss is not otherwise compensated.

Except for removal costs (other than cleanup costs), the fund is not liable where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection. It is also not liable to a particular claimant where that claimant's gross negligence or willful misconduct was a factor in the incident or economic loss, nor is the fund liable to the extent that the incident or economic loss is caused by the negligence of the claimant.

New subsection 311(i) provides that no idemnification, hold harmless or similar agreement shall be effective to transfer from the owner or operator of a facility to any other person the liability imposed under new subsection (g). The Committee notes that liability imposed under new subsection (g) applies to the person who is the owner or operator of a facility at the time of a discharge or threatened discharge.

Section 301(c) amends subsection (k) of Section 311 of the Federal Water Pollution Control Act to provide for the establishment in the Treasury of the United States of a revolving fund to be maintained at a level of not to exceed $100 million for the purpose of carrying out subsections (c), (d), (f) and (i) of Section 311 respecting discharges of hazardous substances.

The Committee gave very careful consideration to the questions of how the fund should be established and from what sources fees should be collected. The concept of collecting fees only from suppliers of certain defined feedstock chemicals offers the advantage of administrative efficiency. However, it results in inequities in that all feedstock chemicals do not always become hazardous substances. This would result in producers of nonhazardous substances bearing an inequitable share of the overall fund. The concept of assessing fees from all suppliers of hazardous substances strictly on the basis of quantities of substances produced and the relative degrees of toxicity provides greater equity by limiting fee collections to substances with the greatest potential of causing harm. However, this approach appears to be overly burdensome to administer. The Committee, therefore, developed an approach which combines the administrative simplicity of feedstock fees with the equity considerations of assessing fees based on toxicity and history of discharges.

Forty percent of the fund revenues each fiscal year are collected from suppliers of defined petrochemical feedstocks. A fee of not to exceed 0.1 cent per pound is imposed on any amount of petrochemical feedstock supplied to another person or used by a supplier.

Twenty percent of the fund revenues each fiscal year are collected from suppliers of defined inorganic feedstocks. A fee of not to exceed $1.00 per short ton is imposed on these feedstocks. The Administrator of the Environmental Protection Agency is authorized to add to the list of inorganic elements or compounds (feedstocks) as he deems appropriate based upon information available to him as a result of listing or characterizing hazardous substances under section 311.

Twenty percent of the fund revenues each fiscal year are collected from suppliers of the substances set forth in new subsection 311(k)(4). These are the substances which, according to data made available to the Committee, historically have had the highest frequencies and volumes of discharge.

Finally, 20 percent of the fund revenues each fiscal year are collected from suppliers of the substances listed in Committee Print 96-45. This Committee Print contains the substances listed in the three most hazardous categories of substances contained in the determination of hazardous substances promulgated by the Environmental Protection Agency pursuant to the provisions of section 311.

Not earlier than 24 months after the enactment of this legislation and not more often than once per fiscal year thereafter, the Administrator shall adjust the fees collected pursuant to paragraphs 2 through 5 to assure, to the extent reasonably possible, that the percent of the total fees collected from each of the sources is equitable, based upon the claims and payment experience of the fund.

Two years after the date of enactment of the legislation and annually thereafter, the Administrator is authorized to add to or delete from those substances included in paragraph 4 (those substances having the highest frequencies and volumes of discharge). These additions or deletions are to be based on discharge history data, including frequency of discharge, volume of discharge, and the environmental damages incurred as the result of such discharges. With regard to paragraphs 2 and 3 (feedstock chemicals), the Administrator is directed to submit annually to Congress his recommendations as to substances which should be added to or deleted from these paragraphs.

Section 302(a) amends subsection (o) of section 311 of the Federal Water Pollution Control Act to provide that, with certain exceptions, no action may be brought in any United States or State court for damages for an economic loss described in Title III, a claim for which may be asserted under the bill. Also, no person may be required to contribute to any fund the purpose of which is to compensate for such a loss nor to establish or maintain evidence of financial responsibility. A State may, however, impose a tax or fee upon any person or upon hazardous substances in order to finance the purchase and prepositioning of cleanup and removal equipment.

The committee intends that the reach and scope of section 311's new preemption provision track that of section 110 of H.R. 85.

Section 302(b) concerns claims procedures. When the Administrator receives information of a discharge in violation of Section 311, he shall, where possible, designate the source of the pollution and notify the owner and operator and guarantor of the designation. The owner, operator, or guarantor must advise of the designation and the procedures by which claims may be presented to him. If he does not, the Administrator advertises at the expense of the owner, operator, or guarantor.

Where the owner, operator, or guarantor all deny a designation, the source of the discharge is from a public vessel, or the Administrator is unable to designate the source, the Administrator shall notify potential claimants of the procedure by which claims may be presented to the fund.

All claims are first presented to the owner, operator, or guarantor, except where the claims are to be presented to the fund. If the owner, operator, or guarantor denies liability, or the claim is not settled within 60 days, the claimant may elect to commence an action in court against the owner, operator, or guarantor or to present the claim to the fund. This election is irrevocable. Where full and adequate compensation is unavailable because the claim exceeds a limit of liability or because the owner, operator, or guarantor are financially incapable of meeting the obligation in full, a claim for the uncompensated damages may be presented to the fund. When a claim is presented to the fund and the fund either denies liability or does not settle the claim within 60 days, the claimant may submit the dispute to the Administrator for decision, or commence a court action. This election is irrevocable. The Secretary is directed to utilize the services of private insurance and claims adjusting organizations or state agencies in processing claims against the fund. A claim must be presented within 3 years from the date of discovery of the economic loss or within 6 years of the incident, whichever is earlier.

Any person or governmental entity, including the fund, who compensates any claimant for an economic loss shall be subrogated to all rights, claims and causes of action which the claimant has under the bill. Upon request of the Administrator, the Attorney General may commence an action on behalf of the fund for the compensation paid by the fund to any claimant.

Section 302(b) also provides that no part of any monies in the revolving fund established in subsection (k) shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency. The purpose of this provision is to insure that monies in the fund are not used for the hiring of personnel outside of customary authorization and appropriations procedures for administrative expenses.

Finally, section 302(b) provides that the owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain evidence of financial responsibility in such amounts as the President determines necessary, but not less than $5 million. This conforms with the minimum liability requirements for such vehicles carrying such substances imposed by new subsection 311(g)(4).

Section 303 provides that nothing in H.R. 85 shall be construed to authorize any person or employee of the United States or any department, agency or instrumentality of the United States to prohibit, control or otherwise regulate the use of any groundwaters. This provision was included to address concerns which were raised before the Committee that the Environmental Protection Agency might utilize the authorities given it in H.R. 85 to interfere with the traditional role of the States in controlling the use of groundwaters.

Section 304 amends section 115 of the Federal Water Pollution Control Act to provide that not to exceed $10 million per fiscal year shall be available from the revolving fund established in section 311(k) to carry out the provisions in section 115. That section directs the Administrator to identify the location of in-place pollutants with emphasis on toxic pollutants in navigable waters and authorizes him, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials.

It is intended that the Administrator and the Secretary of the Army carry out this authority in those priority locations where pollutants such as PCBs, DDT and mercury have collected in the sediment of such waterways. Such priority locations include, but are not limited to, the Hudson River in New York, the Tennessee River and its tributaries and Indian Creek and the Huntsville Spring Branch in Alabama. The Corps of Engineers is currently conducting studies to be completed in the summer of 1980 to determine the efforts appropriate to eliminate or control DDT pollution in the Tennessee River and its tributaries. It is intended that the Administrator and the Secretary of the Army utilize these authorities to provide any necessary remedial actions.

Section 305(a) provides that in any case where the revolving fund established in section 311(k) is insufficient to carry out the purposes for which the fund is available, the Secretary of the Treasury is authorized to utilize funds in the Comprehensive Oilspill Liability Fund established in Section 102 of Title I for such purposes. The Secretary of the Treasury is required to repay as soon as practicable the amount utilized from the section 102 fund from fees collected under section 311(k).

Section 305(b) similarly provides that where the oilspill liability fund is insufficient to carry out the purposes for which it is established, the Secretary of the Treasury is authorized to utilize funds in the section 311(k) fund, with repayment to be made to this fund as soon as practicable from the fees collected under section 102 of Title I.

Section 306 provides that in any case where the discharge of pollutants is a mixture of both oil and hazardous substances, both the oilspill and the section 311(k) funds shall be immediately available for payment of emergency work for any purpose for which either fund is available. The Secretary of the Treasury is directed as soon as practicable to make such adjustments in such funds as may be necessary to insure that the costs of any such work were appropriately allocated to the proper fund.

Section 307 provides that Title III shall take effect 180 days after the date of enactment of H.R. 85.

TITLE IV

Title IV provides that simultaneously with the promulgation or repromulgation of any rule or regulation under authority of H.R. 85, the head of the department, agency or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation would become effective at the end of 60 calendar days of continuous session of Congress if no committee of either House has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution. A rule or regulation that would not become effective at the end of 60 days of continuous session, under the criteria stated above, would become effective at the end of 90 calendar days of continuous session if not disapproved by Congress. Disapproval by Congress would be accomplished by both Houses of Congress adopting a resolution of disapproval within 90 calendar days of continuous session or by one House adopting a resolution of disapproval within 60 calendar days of continuous session that is not then disapproved by the other House within 30 days of continuous session.

This title will provide an orderly procedure for continuing oversight of the very significant authorities conferred on the Secretary of the Department in which the Coast Guard is operating and the Administrator of the Environmental Protection Agency. This procedure will help assure that the intent of Congress is faithfully observed in the rules and regulations that are issued pursuant to these authorities. The section explicitly provides that failure to disapprove a rule or regulation shall not be deemed to be an expression of approval of that rule or regulation.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no separate hearings were held on the subject matter of this legislation by the Subcommittee on Oversight and Review. However, the Subcommittee on Water Resources held hearings on this subject matter.

(2) With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 85 does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C. May 15, 1980.

Hon. HAROLD T. JOHNSON,
Chairman, Committee on Public Works and Transportation,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 15, 1980

1. Bill number: H.R. 85.
2. Bill title: Comprehensive Oil Pollution Liability and Compensation Act.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, May 8, 1980.
4. Bill purpose: Title I of the bill establishes a Comprehensive Oil Spill Liability Fund (COSLF) for the purpose of providing the necessary funds to expedite the clean up of and the compensation for damages resulting from oil spills which may occur in the navigable waters of the United States and in the high seas. This liability and compensation fund is to be financed through fees of up to 3 cents per barrel on oil received at refineries or at terminals for export or import into the United States. The Secretary of the Treasury must establish the fee necessary to keep the fund balance between $150 million and $200 million. The bill authorizes the Secretary of Transportation to borrow from the Treasury, subject to appropriation action, if amounts in the fund are not sufficient to meet obligations. There are also authorized to be appropriated such sums as may be necessary for the general administration activities associated with the fund.

Title II of H.R. 85 incorporates all assets and any liabilities of the Trans-Alaska Pipeline Liability Fund (TAPLF), the Offshore Oil Pollution Compensation Fund (OOPCF) and the Deepwater Port Liability Fund (DPLF) into the COSLF. This title also establishes the COSLF as the fund to be used in response to oil pollution actions and activities undertaken under authority established by the Federal Water Pollution Control Act Amendments of 1972.

Title II of the bill increases the ceiling on funds available to the revised Pollution Fund established by Section 311(K) of the Federal Water Pollution Control Act Amendements of 1972 from $35 million to $100 million. Monies for the fund are to be collected from a schedule of fees established by sections 2 to 5 of this title and assessed against suppliers of petrochemical feedstocks and other hazardous substances.

5. Cost estimate: The bill provides the Secretary of Transportation with direct spending authority to obligate funds from the 311 (K) Pollution Fund and the new COSLF. The table below presents the estimated budget authority associated with this direct spending

authority, the estimated revenues generated from fees and investments, and the estimated net budget impact of the enactment of this legislation.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Direct spending:					
Estimated budget authority	75	75	75	75	75
Estimated outlays	50	64	70	75	75
Estimated revenues COSLF:					
Fees	122	95	37	34	34
Investments	5	13	16	16	16
311(K) pollution fund	93	25	25	25	25
Total revenues	220	133	78	75	75
Net budget impact[1]	170	69	8	0	0

[1] Revenues less outlays (increase in surplus or decrease in deficit).

In addition, the bill authorizes funds for general administrative costs associated with Title I, which are subject to appropriation action. These costs are shown below:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Estimated authorization level	3.0	3.3	3.6	3.9	4.2
Estimated outlays	2.7	3.3	3.5	3.9	4.2

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purposes of this estimate it was assumed that the bill would be enacted on July 1, 1980 and that fees authorized by titles I and III would be collected, where applicable, starting in January 1981. In subsequent years the revenues needed to maintain the COSLF at $200 million are estimated after taking into account estimated expenditures from the fund and investment revenue earned by the assets of the fund. A comparable level of $100 million is maintained in the revised Pollution Fund by adjusting the fee schedules established for that purpose.

Since the COSLF and the revised 311(k) Pollution Fund are expected to be self-supporting, this bill will have little net budget impact over time and will result in net revenues to the government over the short run. This surplus would provide a reserve to deal with a major pollution incident should one occur. Actual activity in each fund will depend on the number of incidents and the value of claims that result from such incidents.

There is very little data available that would provide any indication as to the volume or magnitude of claims that can be expected should this bill become law. For the purposes of this estimate and to illustrate the budget impact of these funds as they are structured by H.R. 85, it has been assumed that each fund would obligate approximately 25 percent of the resources available to it each year. These obligations are assumed to spend at rates similar to that of existing pollution liability funds. The funds are expected to adjust their fee schedules as necessary to replace obligated capital and keep within the limits established by H.R. 85.

It is expected that legal action would recover some portion of these expenditures through the subrogation authority specified in the bill. Experience has shown that the government can expect to recover approximately 50 percent of such expenses, although litigation can take five years or more in many cases. Recovered monies would be deposited in the respective fund and reduce the need for fee revenue.

In addition to fund activity authorized by the bill, there is assumed to be appropriated $3 million in fiscal year 1981 (and annually thereafter adjusted for inflation) to cover the cost of administering the COSFL, promulgating regulations and settling claims.

As specified in the bill, approximately $30 million from the Trans-Alaska Pipeline Liability Fund would be transferred to the COSLF in fiscal year 1981. Two other funds, the Offshore Oil Pollution Compensation Fund (OOPCF) and the Deepwater Port Liability Fund (DPLF) would also be merged into the COSLF as specified in the bill. The President has requested $14 million for the OOPCF for fiscal year 1981, and if appropriated, these funds would be incorporated into the COSLF. (Appropriation of this amount would reduce the estimated revenue requirement in 1981 by $14 million). The DPLF has not been established to date and therefore does not have any funds.

Estimates for both funds assume that no major pollution incident occurs over the period of the estimate. Both funds are assumed to retain liquid assets necessary to clean up a major incident and each has the direct authority to generate additional revenues to reestablish fund levels without directly adding costs to the federal government.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Linwood Lloyd.
10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

(4) With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided:

The effect of carrying out H.R. 85, as reported, is expected to be minimal with respect to prices and cost. The funds required for administration of the legislation are expected to be relatively low, perhaps $2,000,000 to $4,000,000 per year. In addition, the fees imposed on oil and on chemical substances represent a very small fraction of the prices of these substances, so that any increase in price can be expected to be negligible.

COST OF LEGISLATION

Rule XIII(7) of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 85, as reported, in fiscal year 1980 and each of the following 5 years. The committee concurs in the estimates of these costs as presented in the report of the Congressional Budget Office.

VOTE

The committee in compliance with rule XI(2)(l)(A), reports favorably the bill H.R. 85, as amended. The committee ordered the bill reported by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of the Rule XII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

TITLE I—RESEARCH AND RELATED PROGRAMS

* * * * * * *

IN-PLACE TOXIC POLLUTANTS

SEC. 115. The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. [There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended.] *Not to exceed $10,000,000 per fiscal year for fiscal years beginning after September 30, 1980, shall be available from the revolving fund established in section 311(k) of this Act for obligation to carry out this section.*

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

SEC. 311. (a) * * *

* * * * * * *

[(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;]

(6)(A) "owner" means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or

through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) "operator" means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

* * * * * * *

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party **[.]***;*

(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility;

(19) "supplier" means, with respect to subsection (k) of this section, any person who produces, manufactures or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture or importation, or a site that adjoins the site of production, manufacture, or importation, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture or importation;

(20) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(21) "foreign claimant" means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(22) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(23) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of this section; and

(B) cleanup costs, other than those described in clause (A);

(24) "cleanup costs" means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

(25) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.

(b)(1) * * *

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) Any owner [or operator of any vessel,], operator, [or person in charge] *person in charge, or employer of such person in charge,* of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless [the owner or operator] *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

* * * * * * *

(c)(1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment of major ports, to be determined by the President of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters is which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section *or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate,* for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.] *Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.*

* * * * * * *

[(f)(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

[(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

[(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

[(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

[(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

[(g) Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, not withstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge $125 per gross ton of such barge, $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge acutally occurred if such owner or operator were liable. If the United States can show that the discharge of oil or hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. [The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

[(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

[(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

[(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).]

(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

(A) removal costs;

(B) injury to, or destruction of, real or personal property;

(C) loss of use of real or personal property;

(D) injury to, or destruction of, natural resources;

(E) loss of use of natural resources;

(F) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(G) loss of tax revenue for a period of one year due to injury to real or personal property.

(2) A claim authorized by pargraph (1) may be asserted—

(A) under item (A) of paragraph (1), by any claimant: Provided, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): Provided further, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(B) under items (B), (C), and (E) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(C) under item (D) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusives management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: Provided, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(D) under item (F) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(E) under item (G) of paragraph (1), by any State or political subdivision thereof;

(F) under items (B) through (G) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(ii) the claimant is not otherwise compensated for his loss;

(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for the United States claimants; and

(G) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(3) If the Attorney General fails to act under clause (G) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section,

(g)(1) Subject to the provisions of paragraphs (2), (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(C) in the case of ship, $250,000 or $300 per gross ton (up to maximum of $30,000,000), whichever is greater;

(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

(5) There shall be no liability under paragraph (1)—

(A) to the extent that the discharge is caused—

(i) by an act of war, hostilities, civil war, or insurrection; or

(ii) by a natural phenomenon of an exceptional, inevitable, and irrestible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(B) to the extent that the discharge or threat of discharge is caused by an act of omission of a person other than—

(i) the claimant,

(ii) the owner or operator,

(iii) an employee or agent of the claimant, the owner, or the operator, or

(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

(h)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under subsection (f), to the extent that the loss is not otherwise compensated.

(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(i)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: Provided, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including

section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

* * * * * * *

[(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.]

(k)(1) There is hereby established in the Treasury a revolving fund to be maintained at a level (except as provided in paragraph (8)) of not to exceed $100,000,000. Forty percent of the fund revenues each fiscal year shall be collected pursuant to paragraph (2) of this subsection. Twenty percent of the fund revenues each fiscal year shall be collected pursuant to paragraph (3) of this subsection. Twenty percent of the fund revenues each fiscal year shall be collected pursuant to paragraph (4) of this subsection. Twenty percent of the fund revenues each fiscal year shall be collected pursuant ot paragraph (5) of this subsection. Such fund shall be for the purpose of carrying out subsections (c), (d), (f), and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom), and hazardous substances. All sums appropriated to, or deposited in, the fund shall remain available until expended.

(2) There is imposed upon each supplier of petrochemical feedstocks a fee, not to exceed 0.1 cent per pound, on any amount of petrochemical feedstock supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1). For the purposes of this paragraph, "petrochemical feedstock" means liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals including, but not limited to, ethylene, propylene, butylenes, butadiene, butane, propanes, ethane, benzene, toluene, xylenes, naphthalenes, carbon black, and methane (other than methane used to make ammonia).

(3) There is imposed upon each supplier of inorganic elements and compounds a fee, not to exceed one dollar per short ton, on any amount of inorganic element or compound supplied to another person or used by said supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1). The inorganic elements and compounds subject to this fee are—

(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

(B) chlorine, hydrochloric acid, hydrofluoric acid, and bromine in methyl bromide and ethylene dibromide;

(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide;

(D) ammonia and the equivalent weight of ammonia in ammonium nitrate; and

(E) such other inorganic elements or compounds as the Administrator may deem appropriate, based upon information available to him as a result of listing or characterizing hazardous substances under this section.

(4) There is imposed upon each supplier of benzene, toluene, xylene, or styrene a fee, not to exceed 0.1 cent per pound, on any amount of such substances supplied to another person or used by such supplier. There is imposed upon each supplier of sodium hydroxide, hydrochloric acid, sulfuric acid, ammonia, nutric acid, and phosphoric acid a fee, not to exceed one dollar per short tonHw, on a amount of such substances supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

(5) There is imposed upon each supplier of any substances listed in Committee Print of the Committee on Public Works and Transportation of the House of Representatives a fee, not to exceed one dollar per short ton, on any amount of such substances supplied to another or used by the supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

(6) Any fees imposed by paragraphs (2) through (5), inclusive, shall be assessed and collected by the Secretary of the Treasury or his delegate, and the provisions of subtitle F of the Internal Revenue Code of 1954 shall apply to the assessment and collection of such fee as if such fee were a tax described in chapter 32 of such Code.

(7) No earlier than 24 months after the enactment of this paragraph, and not more often than once per fiscal year thereafter, the Administrator shall adjust the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection to assure, to the extent reasonably possible, that the percentage of the total fees collected from each of the authorized sources is equitable, based upon the claims and payment experience of the fund. The Secretary of the Treasury shall establish the new fee schedule by regulation within ninety days of publication in the Federal Register of the Administrator's determination.

(8) Any other funds received by the United States under this section shall also be deposited in the fund established by paragraph (1) of this subsection, along with the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection, for such purposes as are authorized in paragraph (1) of this subsection.

(9) Two years after the date of enactment of this paragraph and annually thereafter, the Administrator is authorized to add to or delete from those substances covered by paragraph (4) of this subsection. Such additions or deletions shall be based on discharge history data, including frequency of discharge, volume of discharge, and the environmental damages incurred as the result of such discharge.

(10) The recommendations of the Administrator as to substances which should be added to or deleted from those listed in paragraphs (2) and (3) of this subsection shall be submitted annually to Congress.

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of [subsections (c) and (i)] *subsection (c)* of this section *respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances*. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

* * * * * * *

[(o)(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

[(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

[(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.]

(o)(1) Except as provided in this title—

(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

(B) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil *(other than petroleum, crude oil, or any fraction or residue therefrom)* or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil *(other than petroleum, crude* *oil, or any fraction or residue therefrom)* barge $125 per gross ton of such barge, or $125,000 whichever is greater, and in the case of any other vessel, $150 per gross ton of such vesel (or, for a vessel carrying oil *(other than petroleum, crude oil, or any fraction or residue therefrom)* or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsiblity may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

* * * * * * *

[(q) The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.**]**

[(r)**]** *(q)* Nothing in this section shall be construed to impose, or authorize the imposition of any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(3) In a case where—

(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

(B) the source of the discharge was a public vessel, or

(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

(2) Claims shall be presented to the fund under subsection (k)—

(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

(B) where the owner or operator may recover under subsection (f)(2)(A).

(3) In the case of a claim presented in accordance with paragraph (1), and in which—

(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(B) the claim is not settled by any person by payment to the claimant withint sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

(4) In the case of a claim presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund under subsection (k). The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

(A) denies all liability for the claim, for any reason, or

(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(7)(A) the Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is

not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testi-

mony of the person and the production by him of books, papers, documents, or any tangible things.

(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, in the damage occurred outside any district, in the nearest district.

(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complainant and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(B) The fund may intervene in the action as a matter of right.

(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(12) No claim may be presented, nor may an action be commenced for damages recoverable under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable,

under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorney's fees; and

(B) for a claim presented to the fund under subsection (s)(3)(B)—

(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(I) the amount the fund has paid to the claimant, without reduction;

(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: Provided, That if the defendant tendered the offer of

the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

(u) No part of any moneys in the revolving fund established in subsection (k) of this section shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.

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TITLE IV—PERMITS AND LICENSES

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SEC. 404. (a) * * *

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(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply.

* * * * * * *

SECTION 204 OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT

LIABILITY

SEC. 204. (a)(1) * * *

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the Trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.*

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

SEC. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.

DEEPWATER PORT ACT OF 1974

* * * * * * *

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

* * * * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of *section 18(l) of this Act section 105 of the Comprehensive Oil Pollution Liability and Compensation Act*;

* * * * * * *

LIABILITY

SEC. 18. (a)(1) * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

[(c)](*b*)(1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expenditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to subsection (f) of this section] *fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and serverally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund as such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(l) the Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages

from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the result of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

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TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

[TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the

Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

[(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

[(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations required by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits of impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

[(6) under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with the activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determiens that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later.

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later, the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim is excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, or any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of ability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 307(c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incured by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties of the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State of Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

[PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321 (b)) determines to be harmful, is prohibited.

[PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more one year, or both.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administation of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

ADDITIONAL VIEWS

The full Committee adopted a three-part fee system under Title III, Hazardous Substances Liability: 60 percent of the funds coming from a fee on organic and inorganic chemical feedstocks; 20 percent from those substances most frequently spilled; and 20 percent from the three most hazardous categories of the Sec. 311, Federal Water Pollution Control Act, hazardous substances list.

Any Superfund fee system must meet four criteria: it must be as equitable as possible; it must be capable of rapid implementation; it must avoid adverse economic and environmental impacts; and it must impose the lightest possible paperwork burden on industry. The Committee bill falls short of these criteria.

For the following reasons, we believe the feedstock fee system meets all four criteria, and hope it will be included in the bill which ultimately becomes law.

Equity.—While no fee will be totally equitable, the feestock fee comes very close to that goal.

First, the feedstock fee would reach most hazardous substances. Almost all hazardous substances are products of the chemical and allied industries, and the heavy metals industries. Almost all organic chemicals are derived from petrochemical feedstocks. Certain heavy metals, halogens, acids and bases are significant elements and compounds for many toxic inorganics. All of these would be covered by the feedstock fee system.

Secondly, the feedstock fee would be imposed on a relatively few substances, at the very beginning of the chain of production and commerce. It would be spread throughout the chemical industry and become a rapidly diminishing percentage of production costs.

Further, this fee would be imposed only once, avoiding additive or cumulative effects through the chain of production.

Finally, most feedstock producers are very large companies that can afford both the fee and the paperwork required. By the time the fee reaches the smaller producers it will be a very small percentage of the costs, imposing little or no paperwork burden on small companies. Fees imposed at other points of the chain of production, or on other substances, would place a proportionately heavier burden on small companies.

Rapid implementation.—One of the prime goals of any fee system is to build rapidly and maintain the fund at a point where it can respond to large number of incidents. Any delay in fee collection will result in government's inability to respond, and greater and longer exposure of people and the environment to hazardous substance releases. Therefore, it is critically important that the fee system, whatever it is, be implemented as rapidly as possible, immediately established and remain in place for the life of the fee system.

Adverse economic and environmental effects.—The feedstock fee is levied once at the beginning of the chain of production and commerce; its economic impact at that point is minimal, and would become a rapidly decreasing proportion of the total production cost throughout the chain. There is no incentive to substitute, because the feedstock fee is imposed on all substitutes. Thus, no sector of the industry would be placed at a competitive disadvantage.

Further, because there is no incentive for substitutes, there is no danger that substances more hazardous, but not covered by the fee, will receive a competitive advantage, with subsequent increased use of these substances.

Industry burden.—A fee system should be administratively simple for industry as well as for government. Under the feedstock approach, there are fewer than 1,000 collection points, and a maximum of 1,000 forms to be filled out. Any other fee system, levied at any other point in the production chain, or on any other basis, will have far more substances and/or collection points, meaning a greater paperwork burden for more industries, including very small ones.

In sum.—We believe that the feedstock approach provides the fairest and simplest means of raising adequate funds for Superfund, in a relatively brief period of time, and hope that this system will ultimately be adopted in the final Act.

JIM L. OBERSTAR.
BOB EDGAR.
DAVID E. BONIOR.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96-172
2d Session } { Part III

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

JUNE 20, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 85]

The Committee on Ways and Means, to whom was referred the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is a new title to be added at the end of both the amendment in the nature of a substitute recommended by the Committee on Merchant Marine and Fisheries and the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation, and appears in the reported bill in boldface italic type.

WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 85, THE COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act, has been considered and reported favorably by the Committee on Merchant Marine and Fisheries (H. Rept. 96-172, part I) and the Committee on Public Works and Transportation (H. Rept. 96-172, part I). H.R. 85 then was referred sequentially to the Committee on Ways and Means for consideration of the revenue aspects of the legislation, which properly fall within the jurisdiction of the Committee on Ways and Means. Specifically, the Committee on Ways and Means has considered the revenue issues related to the establishment of taxes on crude oil, petrochemical feedstocks, and certain specified inorganic chemicals for use to provide revenues to cleanup discharges of oil and hazardous substances into the navigable waters of the United States. As a result of this consideration, the Committee on Ways and Means favorably reports H.R. 85 with a committee amendment in the form of a new title.

I. SUMMARY

The Ways and Means Committee amendment to H.R. 85 imposes excise taxes on crude oil, specified petrochemical feedstocks, and specified inorganic substances. These excise taxes are expected to raise $75 million a year from oil, $50 million from petroleum feedstocks and $25 million from inorganic chemicals. Revenues from the excise tax on crude oil (1.3 cents a barrel) are to be deposited into a new "Comprehensive Oil Pollution Liability Trust Fund," the proceeds of which can be used to finance cleanup costs and pay claims for certain damages resulting from the discharge of oil into the navigable waters of the United States. Similarly, revenues from the excise taxes on petroleum feedstocks ($1.18 a ton) and on specified inorganic chemicals ($0.31 a ton) are to be deposited into a new "Hazardous Substance Pollution Liability Trust Fund," the proceeds of which can be used to finance cleanup costs and to pay certain claims arising from discharges of hazardous substances into the navigable waters of the United States.

These new trust funds will absorb or replace other Federal funds relating to oil and hazardous substance liability—including the Offshore Oil Pollution Compensation Fund, the Trans-Alaska Pipeline Liability Fund, the Deep Water Port Fund, and the section 311 revolving fund of the Clean Water Act. In addition to financing cleanup and removal costs, both Trust Funds could pay claims for (1) property damage, (2) loss of income by fishermen, and (3) destruction of natural resources (if the claim is asserted by the President or by a State). The Trust Funds cannot borrow from the United States Treasury, and no claim against a Trust Fund constitutes an entitlement from the United States. Claims against a Trust Fund will be payable only to the extent the Trust Fund has assets in excess of a $30 million "cleanup reserve." Claims which are unpaid due to this reserve requirement will be deferred until excise tax revenues become available to pay them. The excise taxes will terminate on September 30, 1985, and payments out of the fund will be prohibited after that date unless further action is taken by the Congress.

II. EXPLANATION OF WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 85

A. Present Law

Excise taxes

Under present law, excise taxes are imposed upon the manufacture, production, removal, sale, supply, or use of various items or services. In some instances, revenues from these taxes are deposited into specially designated trust funds. Examples of such earmarked excise taxes include the Black Lung coal tax (Code sec. 4121), which is deposited into the Black Lung Disability Trust Fund, aviation-related taxes (e.g., Code secs. 4261, 4271), which are deposited into the Airport and Airway Trust Fund, highway-related taxes (e.g., Code secs. 4041 and 4081 (fuels), 4071 (tires, etc.)) which are deposited into the Highway Trust Fund and inland waterway taxes (Code sec. 4042) which are deposited into the Inland Waterways Trust Fund.

Under present law, there is excise tax imposed generally with respect to substances, such as crude oil, petrochemical feedstocks, and inorganic chemicals, which may cause environmental pollution or other damage. However, charges (fees) are imposed under present law on oil produced on the Outer Continental Shelf and on Alaskan North Slope oil transported through the Trans-Alaska Pipeline System (TAPS). These charges are described below.

Funds

Present law contains no specially designated fund intended to provides monies for cleanup, or to compensate for economic losses due to all types, of environmentally hazardous pollution. However, there are various Federal and State funds designed to accomplish these purposes as to specific locations, damages or losses, and certain type of spills, discharges and pollution. Some of these funds, and related provisions, are described below.

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) establishes a $35 million revolving fund maintained by fines, penalties and appropriations of general revenue. The fund may be used for cleanup of releases of oil and designated hazardous substances into navigable waters and for restoration of accompanying natural resources. The Act also establishes certain rules pertaining to responsibility for cleanup expenses and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act (TAPAA)

The TAPAA (43 U.S.C. sec. 1651) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and its revenues are intended to be used to compensate for damages, including cleanup, restoration of natural resources, and economic loss, resulting from spills of oil transported through TAPS. Liability of owners and operators is defined, and the Liability Fund may seek to recover its expenses from responsible parties. Because of the $100 million ceiling to which the Fund is subject, the fee is suspended for such time as that maximum is maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments to the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1331). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. The fee is collected by the Internal Revenue Service, and may be reduced when the balance in the Fund reaches the $200 million cap. The Fund may be used to compensate for damages, including cleanup, property damage, and loss of income and tax revenue, resulting from spills of oil produced on the

Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are defined, and the Fund may seek to recover its expenses from responsible parties. Collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 (33 U.S.C. sec. 1502), established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in deep water port operations. When operational, this fund will be maintained by a $.02 a barrel fee assessed on oil loaded at a deep water port.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act provides for the regulation and control of the generation, treatment and disposal of hazardous wastes. Permits are required for treatment or storage facilities. The Environmental Protection Agency may sue to require cleanup of an inactive disposal site if the site is posing an imminent and substantial hazard to public health. However, this provision does not provide funds for cleanup of inactive sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

B. Reasons for Change

The Committee on Ways and Means believes that it is important to establish readily available sources of funds to cleanup pollution from designated environmentally hazardous items, and to provide compensation for specified economic losses resulting from such pollution. The committee, however, does not believe that the United States Government should have to bear these costs. It further believes that these cleanup and compensatory costs generally should be imposed upon the party responsible for them, and alternatively upon the class ot persons who create environmentally hazardous items most frequently.

To accomplish these goals, the committee has decided that it is appropriate to impose excise taxes on certain items which may result in environmentally hazardous pollution if spilled or discharged or which are used to produce hazardous material. The committee also has decided that revenues from these taxes should be earmarked for inclusion in two new trust funds for payments of cleanup costs and specified compensatory damages. Because the precise scope of the various problems relating to environmentally hazardous pollution, and the need for funds to remedy it, are not readily ascertainable, the committee has decided to make both the taxes and authority to spend from trust funds terminate at the end of September 1985 so that Congress may reexamine the situation.

The committee amendment includes a requirement that the Secretary of the Treasury, in consultation with the Department of Transportation, the Environmental Protection Agency, the Department of Commerce and the Special Trade Representative, conduct a study on the feasibility of (1) imposing environmental excise taxes on the basis of the frequency of pollution by hazardous substances and the degree of environmental harm resulting from such pollution, and (2) adjusting the environmental taxes according to various modes of transportation. The Secretary is to report to the Congress not later than January 1, 1985.

C. Explanation of Provisions

1. Environmental excise taxes

a. Petroleum tax (sec. 511 of the amendment and new secs. 4601–4602 of the Code)

The committee amendment imposes a specific excise tax (the "petroleum tax") of 1.3 cents a barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil. For this purpose, as under existing Treasury regulations, refining is any operation by which the physical or chemical characteristics of crude oil or its products are changed, exclusive of such operations as passing crude oil through separators or placing crude oil in settling tanks.

If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, then the user or exporter of the oil is subject to the tax to the same extent as it would have been imposed had a United States refiner received the oil. The committee amendment clarifies the definition of taxable petroleum by defining oil that is subject to tax in a more precise manner. As a result, the amendment specifies that, for purposes of the petroleum tax, the term crude oil includes crude oil condensate and natural gasoline, but not other natural gas liquids. Thus, the term crude oil also does not include butane, ethane, or propane recovered from a natural gas stream. These substances, however, are taxed as "specified petrochemical feedstocks" under the chemical tax described below. In addition, taxable crude oil does not include crude oil used for extraction purposes on the premises where it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. Further, the term crude oil does not include synthetic petroleum, e.g., shale oil, liquids from coal, tar sands, or biomass, or rerefined oil (within the meaning of Code sec. 4093(b)(3)).

In the case of refiners that recover natural gasoline, the gasoline so recovered is treated as received by that refiner at the time it is recovered.

If natural gasoline is recovered in a gas separation plant rather than at a refinery, the tax is imposed when the gasoline is received at a refinery or when it is used or exported without passing through a refinery. Thus, a refiner must pay the same tax whether it purchases natural gasoline or wet gas from which it recovers natural gasoline.

Petroleum products entered into the United States for consumption, use or warehousing, are subject to a tax of 1.3 cents a barrel. This tax is imposed upon the person who enters such products. Generally, the term petroleum products includes crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form (unless such product is defined as a petrochemical feedstock). For purposes of determining whether crude oil or petroleum products have been produced in, entered into, or exported from the United States, the term United States means the fifty States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception in the tax for bonded petroleum products.

In the case of areas which are not subject to the general United States customs laws, an "entry" has occurred at any time that such an event would have occurred if the customs laws were applicable to that area. However, an "entry" is deemed not to have occurred in the case of fuel stores on a ship or the casual use of items on such as fuel in automobile's gas tank.

The committee amendment also provides that the petroleum tax is imposed only once with respect to any petroleum product. Anyone who otherwise is liable for the petroleum tax may establish that it already has been imposed with respect to that product.

The committee amendment provides special rules relating to the transfer of the Trans-Alaska Pipeline Liability Fund to the Oil Pollution Trust Fund. If the Secretary of the Treasury determines that there is a surplus in the former fund, such amount is treated as an advance payment of the petroleum tax imposed on the crude oil first transported through the TAPS after the date of the determination. If the Secretary, however, determines that there is a deficit in the transferred fund, the petroleum tax imposed on the crude oil first transported through the TAPS after that determination is increased by 2 cents a barrel until the amount of the increased tax equals the deficit.

The committee amendment contains no special administrative or compliance provisions relating to the petroleum tax. Instead, the existing rules relating to excise taxes apply. Thus, the Internal Revenue Service has its full range of administrative and compliance powers available for administering and collecting the tax. Similarly, the penalties contained in existing law apply, as appropriate, to the petroleum tax.

Effective date

The petroleum tax imposed by the committee amendment applies for the five-year period, October 1, 1980, through September 30, 1985.

b. Chemical tax (sec. 511 of the amendment and new secs. 4651–4652 of the Code)

The committee amendment also imposes specific excise taxes (the "chemical tax") on specified petrochemical feedstocks and on specified inorganic substances. The tax, which is similar to existing excise taxes, is imposed on any taxable chemical sold by the taxpayer, i.e., the manufacturer, producer, or importer of the chemical. If the taxpayer uses a taxable chemical prior to its sale, the tax is imposed as if the chemical had been sold.

The chemical tax on specified petrochemical feedstocks is $1.18 a ton. The feedstocks subject to tax are: ethylene, propylene, butylene, butadiene, butane, propane, benzene, toluene, nylene, napthalene, methane, carbon black, and ethane. These feedstocks are subject to the chemical tax regardless of the source from which the feedstock is derived. As a result, feedstocks derived from synthetic petroleum are subject to the chemical tax.

There is no exemption from the chemical tax for petrochemical feedstocks used as fuel. Because petroleum fuels typically pass through the hands of numerous persons before they are burned by the ultimate consumer, it is unclear how such an exemption could be effectively administered. The cost of documenting ultimate fuel use under such circumstances might well cost more than the taxes saved. The committee amendment does require the Secretary of the Treasury to study the feasibility of providing an exemption for petrochemical feedstocks which are used as fuels.

The tax on specified inorganic substances is $0.31 a ton. The inorganic substances subject to the tax are:

(1) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

(2) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

(3) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

(4) ammonia and the equivalent weight of ammonia in ammonium nitrate.

In the case of a taxable chemical which is a gas (e.g., methane), the tax of $1.18 a ton is imposed on the number of cubic feet of such gas which is equivalent to 2000 lbs. on the basis of molecular weight.

The committee amendment also provides that the Secretary of the Treasury is to promulgate regulations necessary to avoid imposition of the chemical tax more than once upon the same substance. Specifically, the amendment provides that if a taxable chemical is used to manufacture or produce a second taxable chemical, then a credit against the amount of tax on the second chemical would be permitted for (but not in excess of) the amount of tax imposed on the first substance. Thus, for example, if methane is used to produce ammonia, a credit for the tax on methane would be allowed against the tax on the ammonia.

For purposes of the chemical tax, an importer is anyone who enters taxable chemicals into the United States for consumption, use, or warehousing. In the case of areas which are not subject to the general United States customs laws, an "entry" has occurred at any time that such an event would have occurred if the customs laws were applicable to that area. However, an "entry" is deemed not to have occurred in the case of fuel stores on a ship or the casual use of items such as fuel in an automobile's gas tank.

The term United States means the fifty States, the District of Columbia, Puerto Rico, and Northern Mariana Islands, the Trust Territory of the Pacific, and any possession of the United States, as well as the Outer Continental Shelf and any foreign trade zones of the United States. There is no exception from the chemical tax for bonded items.

The committee amendment contains no special administrative or compliance provisions relating to the chemical tax. Instead, the existing rules relating to excise taxes apply. Thus, the Internal Revenue Service has its full range of administrative and compliance powers available in administering and collecting the tax. Similarly, the penalties contained in existing law apply, as appropriate, to the chemical tax.

Effective date

The chemical tax imposed by the committee amendment applies for the period, October 1, 1980, through September 30, 1985.

2. Trust funds (secs. 521–522 and 531–534 of the amendment)

The committee amendment establishes two trust funds, the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter referred to as the Oil Pollution Trust Fund), and the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter referred to as the Hazardous Substance Trust Fund).

In general

The Oil Pollution Trust Fund consists of any amount that is appropriated or credited to it pursuant to the committee's amendment, or transferred to it under any other provision of the Act. Therefore, the Oil Pollution Trust Fund will consist of: (1) the assets and liabilities of the Trans-Alaska Pipeline Liability Fund and the Offshore Oil Pollution Compensation Fund, (2) petroleum excise taxes imposed under the Act (new Code sec. 4601), (3) amounts recovered or collected on behalf of the Oil Pollution Trust Fund under Title I of the Act, and (4) any penalties imposed under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils) or under Title I of this Act. Disbursements from the Oil Pollution Trust Fund may not be made after September 30, 1985, or for any purpose other than paying claims which are recognizable under Title I of this Act for the specified damages described below.

The Hazardous Substance Trust Fund consists of such amounts as may be appropriated or credited to it under the committee's amendment or as may be transferred to it under any other provision of the Act. Therefore, the Hazardous Substance Trust Fund will consist of: (1) any moneys transferred to it from the section 311 fund under other provisions of the Act, (2) chemical excise taxes imposed under the Act (new Code sec. 4651), (3) any amount recovered or collected on behalf of the Hazardous Substance Trust Fund under section 311 of the Federal Water Pollution Control Act, and (4) any penalty imposed under that section (insofar as it relates to any substance other than petroleum oils). No amount may be disbursed from the Hazardous Substance Trust Fund after September 30, 1985, or for a purpose other than paying a claim under section 311 of the Federal Water Pollution Control Act for certain compensable damages described below.

Comparable damages

Under the committee amendment, the term "compensable damages" means damages asserted for any of the following items (which otherwise meet the requirements of the Act): (1) removal costs, (2) injury to, or destruction of, real or personal property, (3) injury to, or destruction of, natural resources, and (4) certain losses of opportunities to harvest marine life due to injury to, or destruction of, natural resources. Damages asserted for the loss of opportunity to harvest marine life are "compensable damages" only if the claimant meets specified income requirements, and then only to the extent that the damages were sustained during the 2-year period beginning on the date when the claimant first suffered such loss. The applicable income requirements are satisfied if the claimant's gross income from the harvesting of marine life for the taxable year which includes the day on which the person first suffered the loss of opportunity to harvest marine life, or for the preceding taxable year, exceeds 25 percent of his total gross income from all sources for the taxable year, or the preceding taxable year, as the case may be.

Any recovery for loss of opportunity to harvest marine life would be includible in gross income under the generally applicable income tax rules. Damages asserted for loss of opportunity to harvest marine life do not include any asserted by a person who does not meet the income tests, and a special rule applies, however, to certain claims which arise before October 1, 1980, and which would have been payable out of a fund which is transferred to one of the trust funds established by the committee's amendment. To the extent that such a claim would have been payable from a transferred fund, it is payable out of the transferee trust fund created by the amendment notwithstanding the limitations otherwise imposed by the amendment, therefore is inapplicable to marine service (and related) persons.

The committee amendment provides that no amount in either the Hazardous Substance Trust Fund or the Oil Pollution Trust Fund may be used to pay interest on any claim for any period prior to the 46th day after the day on which the claim is determined finally. For this purpose, a final determination would include authorized on-site settlements.

Trust fund borrowing

Under the committee amendment, neither the Hazardous Substance Trust Fund nor the Oil Pollution Trust Fund may borrow any amount from the United States Government.

The committee amendment provides, however, that one trust fund may lend to the other fund if certain prerequisites are satisfied. Interfund loans are permitted if: (1) the Secretary reasonably expects that the amount to be borrowed will not be needed by the lending fund for the period of the loan, (2) interest is payable on the loan at the rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturity similar to that of the loan, and (3) immediately after the loan the amount in the lending fund (determined without regard to any loan made by the fund) exceeds $30 million. For purposes of making the determination as to expected revenue needs of the lending trust fund for the period of the loan, the Secretary of the Treasury is to consult with the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and with the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund. In addition to these explicit requirements, the committee anticipates that any loan will be repaid by the borrowing fund as promptly as is practicable.

Claims limitations

Under the committee amendment, no amount in either trust fund may be used to pay a claim (other than one for removal costs) to the extent that the payment of the claim would reduce the balance in the paying fund to an amount less than $30 million. Any claim which cannot be satisfied due to this limitation is to be paid in full when the trust has an amount of revenues, in excess of the limitation, adequate to allow it to satisfy the claims. In the case of claims which cannot be paid at a particular time due to the $30 million balance restriction, such suspended claims are to be paid, to the extent permitted by the balance restrictions, in the order in which they were determined finally.

The committee amendment explicitly provides that any claim for "compensable damages" filed against either trust fund may be paid out only from such trust funds. The amendment further provides that nothing in the Act, or in any amendment made by the Act, authorizes the payment by the United States Government of any portion of any claim for damages under the Act, or under any amendment made by the Act, out of any source other than from either of the trust funds established by the committee's amendment. A result of these explicit provisions is that no entitlement is established by the Act, or by any amendment made by the Act, against the United States Government.

Administrative provisions and reports

Under the committee amendment, amounts received by the Treasury are to be transferred to the appropriate trust fund at least monthly. Proper adjustments must be made in subsequently transferred amounts to the extent that prior estimates were in excess of or less than the amounts required to be transferred. In addition, the Secretary must report to Congress on the condition of each trust fund for each year ending after September 30, 1980. These reports must include a description of the financial condition of each trust fund, the results of the operation of each trust fund during the preceding fiscal year, and on its expected fiscal condition and operation during the following five fiscal years.

The Secretary may invest such portion of either trust fund as is reasonably determined not to be required to meet current withdrawals. Such investments may be made only in public debt securities.

Revenues from the trust funds may be disbursed for costs incurred by the United States by reason of a claim for compensable damages, including processing costs, investigating costs, court costs, and Government attorney fees.

Effective date

The trust funds established by the committee amendment are for the period October 1, 1980 through September 30, 1985.

3. Coordinating provisions (sec. 541 of the amendment)

The committee's amendment contains a number of provisions intended to coordinate its amendment with other provisions of the Act. Generally, the amendment provides that nothing in the Act, or in any provision of the Act (other than in the committee amendment) authorizes the creation of any fund, the payment out of any fund created by the committee amendment, the levy or collection of any fee, or the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under the committee amendment, or any amendment made by the committee amendment. As a result, rules or regulations promulgated under the authority of the committee amendment are not subject to a legislative veto. In addition, the committee amendment clarifies that its references to named Acts limit the incorporation of all relevant provisions of those Act to their terms on the date of enactment of the committee amendment, without regard to subsequent amendment or modification.

To the extent not inconsistent with the committee's amendment, any reference in Titles I or II of the Act to a "fund" is deemed to be a reference to the Oil Pollution Trust Fund, and any reference in Title III of the Act (or in any amendment made by that Title) to a "fund" is deemed to be a reference to the Hazardous Substance Trust Fund.

4. Study (sec. 551 of the amendment)

Under the committee amendment, the Secretary of the Treasury must submit a report to Congress not later than January 1, 1985, on the feasibility of: (1) determining the environmental excise taxes imposed by the committee's amendment on the basis of the frequency of pollution by hazardous substances and the degree of environmental harm resulting from such pollution, and (2) adjusting the environmental taxes according to various modes of transportation to reflect different risks of pollution. The Secretary also must include in this report the results of a study on the impact of the environmental taxes on the Nation's balance of trade with other countries, and on the feasibility of exempting from the taxes petrochemical feedstocks which are used for fuel.

The study required by the committee's amendment is to be conducted by the Secretary of the Treasury in consultation with the Department of Transportation, the Environmental Protection Agency, the Department of Commerce, and the U.S. Trade Representative.

III. BUDGET EFFECTS OF COMMITTEE AMENDMENT

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of the provisions of the committee's amendment to H.R. 85.

The excise taxes imposed under the committee's amendment will increase budget receipts by $138 million in fiscal year 1981 and by $150 million per year in fiscal years 1982–1985, as shown in the following table.

Estimated Revenue Effects From Excise Taxes on Petroleum and Specified Chemicals in H.R. 85 as Reported by the Committee on Ways and Means

[Millions of dollars]

	Fiscal years				
	1981	1982	1983	1984	1985
Excise tax on—					
Petroleum	69	75	75	75	75
Petrochemical feedstocks	46	50	50	50	50
Inorganic feedstocks	23	25	25	25	25
Total	138	150	150	150	150

The Treasury Department agrees with this statement.

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 3(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report H.R. 85, as amended. The bill, as amended by the committee, was ordered favorably reported by voice vote.

B. Other Matters

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the actions on the H.R. 85 as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was a result of the committee's hearings and deliberations with respect to the proposed fees and funds included in the "Comprehensive Oil Pollution and Liability Compensation Act" as reported by the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation, that the committee concluded that it is appropriate to enact the provisions contained in the committee amendment. The committee held a public hearing on the subject on June 2, 1980, and approved the committee amendment to H.R. 85 on June 13, 1980.

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by the committee amendment involve no new budget authority or new or increased tax expenditures.

Consultation with Congressional Budget Office on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this document) and agrees with the budget estimates.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of the committee amendment.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of the committee amendment is not expected to have a significant inflationary impact on prices and costs in the operation of the national economy.

The committee amendment imposes an excise tax on crude oil of 1.3 cents a barrel, the revenues from which are to be deposited into a newly established Comprehensive Oil Pollution Liability Trust Fund to finance cleanup costs and pay claims for certain damages resulting from discharges or spills of oil into the navigable waters of the U.S. Similarly, the committee amendment imposes excise taxes of $1.18 a ton on petroleum feedstocks and 31 cents a ton on specified inorganic feedstocks, the revenues from which are to be deposited into a newly established Hazardous Substance Pollution Liability Trust Fund to finance cleanup costs and pay certain claims arising from discharge or spills of hazardous substances into the navigable waters of the U.S.

Since these excise taxes and trust funds will replace certain existing fees on petroleum and the taxes are deductible for income tax purposes, the net impact on overall prices in the economy should be minimal. The increased costs attributable to the excise taxes will be small, and will be offset in savings to the nation's environment and health from the cleaning up of oil and hazardous substances spills into navigable waters provided for under the trust funds.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

CHAPTER 31. Special fuels.
CHAPTER 32. Manufacturers excise taxes.
CHAPTER 33. Facilities and services.
CHAPTER 34. Policies issued by foreign insurers.
CHAPTER 35. Taxes on wagering.
CHAPTER 36. Certain other excise taxes.
CHAPTER 37. Sugar.
CHAPTER 38. Environmental taxes.

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CHAPTER 38—ENVIRONMENTAL TAXES

Subchapter A. Tax on petroleum.
Subchapter B. Tax on certain chemicals.

Subchapter A—Tax on Petroleum

Sec. 4601. Imposition of tax.
Sec. 4602 Definitions and special rules.

SEC. 4601. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax 1.3 cents a barrel on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

SEC. 4602. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) CRUDE OIL.—The term "crude oil" includes crude oil condensates and natural gasoline.

(2) DOMESTIC CRUDE OIL.—The term "domestic crude oil" means any crude oil produced from a well located in the United States.

(3) PETROLEUM PRODUCT.—The term "petroleum product" includes crude oil.

(4) UNITED STATES.—

(A) IN GENERAL.—The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term "United States".

(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term "United States" includes any foreign trade zone of the United States.

(5) UNITED STATES REFINERY.—The term "United States refinery" means any facility in the United States at which crude oil is refined.

(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any Untied States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

(7) PREMISES.—The term "premises" has the same meaning as when used for purposes of determining gross income from the property under section 613.

(8) BARREL.—The term "barrel" means 42 United States gallons.

(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

Subchapter B—Tax on Certain Chemicals

Sec. 4651. Imposition of tax.
Sec. 4652. Definitions and special rules.

SEC. 4651. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

(2) 31 cents a ton in the case of specified inorganic substances.

(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

SEC. 4652. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) TAXABLE CHEMICAL.—The term "taxable chemical" means any substance—

(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

(b) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term "specified petrochemical feedstock" means any of the following sustances:

Ethylene
Propylene
Butylene
Butadiene
Butane
Propane
Benzene
Toluene
Xylene
Napthalene
Methane
Carbon black
Ethane

(3) Specified inorganic substance.—The term "specified inorganic substance" means any of the following substances:

(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

(4) United States.—The term "United States" has the meaning given such term by section 4602(a)(4).

(5) Importer.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(6) Ton.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(7) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) Use by Manufacturer, Etc., Considered Sale.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

(c) Refund or Credit for Certain Uses.—Under regulations prescribed by the Secretary, if—

(1) a tax under section 4651 was paid with respect to any taxable chemical, and

(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.

I

Union Calendar No. 694

96TH CONGRESS
2D SESSION

H. R. 85

[Report No. 96-172, Parts I, II, and III]

To provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. BIAGGI (for himself, Mr. MURPHY of New York, Mr. TREEN, Mr. SNYDER, Mr. JONES of North Carolina, Mr. PRITCHARD, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. PATTERSON, Mr. BAUMAN, Mr. GINN, Mr. LENT, Mr. HUBBARD, Mr. EVANS of Delaware, Mr. BONKER, Mr. FORSYTHE, Mr. D'AMOURS, Mr. EMERY, Mr. OBERSTAR, Mr. DORNAN, Mr. HUGHES, Mr. TRIBLE, Ms. MIKULSKI, Mr. BONIOR, Mr. AKAKA, Mr. BOWEN, and Mr. ZEFERETTI) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation

MAY 15, 1979

Reported from the Committee on Merchant Marine and Fisheries, with an amendment, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 16, 1980

Additional sponsors: Mr. CHARLES H. WILSON of California, Mr. MCCLOSKEY, Mr. RICHMOND, Mr. LAFALCE, Mr. MITCHELL of Maryland, Mr. RANGEL, Mr. MYERS of Pennsylvania, Mr. ANDERSON of California, Mr. STACK, Mr. BREAUX, Mr. ADDABBO, Mr. WOLFF, Mr. HOWARD, Ms. HOLTZMAN, Mr. SEIBERLING, Mr. MINETA, Mr. SCHEUER, Mr. RAHALL, Mr. WEISS, Mr. DOWNEY, Mr. MCEWEN, Mr. ROE, Mr. MAGUIRE, Mrs. BOGGS, Mr. GUARINI, Mr. STOKES, Mr. CARNEY, Mr. STUDDS, Mr. SAWYER, Mr. LAGOMARSINO, Mr. PEPPER, Mr. HOLLENBECK, Mr. AUCOIN, and Mr. LOWRY

MAY 16, 1980

Reported from the Committee on Public Works and Transportation with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

MAY 20, 1980

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Ways and Means for a period ending not later than June 20, 1980, for consideration of such portions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(v), rule X

JUNE 20, 1980

Additional sponsor: Mr. LOWRY

JUNE 20, 1980

Reported from the Committee on Ways and Means with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in boldface italic]

[For text of introduced bill, see copy of bill as introduced on January 15, 1979]

A BILL

To provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *That this Act may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".*

TITLE I—POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 102;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or

under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

(o) "navigable waters" means the waters of the United States, including the territorial sea;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign coun-

try, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership

of, a vessel or facility, but does not include a person who, without participating in the management or operation of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(z) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(aa) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b)

of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(bb) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(cc) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Spill Liability Fund. The amount of the fund may not exceed $200,000,000, except to the extent necessary to permit payment into the fund of moneys recovered or collected under subsections (b) (2) and (3) of this section. The fund shall be administered by the Secretary and the Secretary of the Treasury, as specified in this section. The fund may sue and be sued in its own name.

(b) The fund is constituted from—

(1) all fees collected pursuant to subsection (d);

(2) all moneys recovered on behalf of the fund under section 108;

(3) all other moneys recovered or collected on behalf of the fund, under this title.

(c) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(aa)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

(d)(1) Subject to the provisions of section 202(b), of this Act, the Secretary of the Treasury shall collect from each refinery owner, and from the owner of each terminal receiving oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of oil received. Oil upon which a fee has been levied under this paragraph shall not be subject to subsequent levy hereunder. The person who owns such oil or has a royalty interest in such oil under the Outer Continental Shelf Lands Act, as amended, shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal: Provided, That whenever a fee is levied on oil that was produced under a lease

agreement or other contract, under the authority of the Outer Continental Shelf Lands Act, as amended, that entitles a person to a payment calculated as a percentage of production, commonly referred to as a royalty, that person is considered to be the owner of that percentage of oil which constitutes a royalty, whether that royalty is paid in value or in kind.

(2) The Secretary of the Treasury, after consulting with the Secretary, shall, by regulation, establish the amount of the fee to be collected and procedures relating to the collection of the fee. No amendment to these regulations may become effective less than ninety days after publication of the amendment in the Federal Register. Any change in the amount of the fee shall be designed to insure that the fund is maintained at a level not less than $150,000,000 and not more than $200,000,000. No regulation that changes fees, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation.

(3)(A) Any person who fails to collect or pay fees as required by this section and the regulations issued under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2).

Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected under paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the fund.

(2) The Secretary of the Treasury may invest any excess in the fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and under regulations issued by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any

obligations held in the fund shall be credited to and form a part of the fund.

(f) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of theses notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) loss of use of real or personal property;

(4) injury to, or destruction of, natural resources;

(5) loss of use of natural resources;

(6) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: Provided, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: Provided fur-

ther, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under items 2, 3, and 5, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 4, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: Provided, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 6, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under item 7, by any State or political subdivision thereof;

(6) under items 2 through 7, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: Provided, however, That condition (C) shall not apply where the claim is asserted by a resident of Canada and

where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(7) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

(d) If the number of members of a class in an action brought under subsection (b)(7) or subsection (c) exceeds one thousand, publication of notice of such action in local newspapers of general circulation in the areas in which the damaged persons reside shall be deemed to fulfill the requirement

for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(aa)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under section 103, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(aa), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: Provided, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regula-

tions shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or

operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

SEC. 106. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106 (b), or

(2) where the owner or operator may recover under section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(a)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsection (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised

Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel.

Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in

accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to

the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or govern-

mental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 107 (c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subjection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: Provided, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less

the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) The Secretary may incur indebtedness on behalf of the United States, as provided in section 102(f), to the extent provided in appropriation Acts for that purpose.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of the fund during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of the fund and the administration of the liability provisions of this title.

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: Provided, that the penalty prescribed by section 111 for fail-

ure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to

the Comprehensive Oil Spill Liability Fund established by section 102 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made. If the Secretary finds that—

(A) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to paragraph (4) of this subsection, the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 102(d) of this Act on barrels of oil, and the Secretary may waive such fee until such time as the total amount of the fees so waived equals the difference between the amount of the

assets so transferred and the amount of the outstanding claims so certified: Provided, That, should the fee due under section 102(d) of this Act be no longer required whereby the assets transferred and remaining can no longer be used as an advance payment, then the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall be rebated by the Secretary directly to the operator of the trans-Alask oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel; or

(B) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary shall increase by 2 cents per barrel the fee imposed under section 102(d) on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(3) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(4) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under paragraph (2) of this subsection for the collection or payment of fees established under section 102(d) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. The owner shall pay to the State of Alaska during such time as the collection or payment of fees under section 102(d) of this Act is waived.

(5) For purposes of paragraphs (2) and (3)—

(A) the term "barrels of oil" means only barrels of oil which would, but for the repeal made by paragraph (1), be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act;

(B) the term "Secretary" means the Secretary of the Treasury.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"Sec. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution, (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

> *"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".*

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Clause A of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred

thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of this section.".

(7) Subsections (f), (g), (h), (i), and (o) are amended by inserting after the word "oil" wherever it appears the words "(other than petroleum, crude oil, or any fraction or residue therefrom)", except where the word "oil" is preceded by the word "such".

(8) Subsection (f) is further amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against the person furnishing financial responsibility under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act,".

(9) Subsection (g) is further amended, by inserting in the last sentence, after the word "party" the words "or against the person providing financial responsibility for that party under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act,".

(10) Subsection (k) is amended to read as follows:

"(k) There is authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l)

of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section respecting such discharges shall also be deposited in this fund for these purposes. All sums appropriated to, or deposited in, the fund shall remain available until expended.".

(11) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.".

(12) Subsection (p) is repealed, and subsections (q) and (r) are redesignated subsections (p) and (q), respectively.

(e) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(l) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu

thereof "fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(f) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95–372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by section 102 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 203. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 511. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definitions and special rules.

"SEC. 4601 IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a).

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto

Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed in a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene; butylene; butadiene; butane; propane; benzene; toluene; xylene; naphthalene; methane; carbon black; ethane.

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of

the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.".

(b) CLERICAL AMENDMENT—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. ENVIRONMENTAL TAXES.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

PART I—ESTABLISHMENT OF TRUST FUNDS

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter

in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in

paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Oil Pollution Trust Fund after September 30, 1985.

SEC. 522. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act, and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Hazardous Substance Trust Fund after September 30, 1985.

PART II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of opportunity to harvest marine life due to injury to, or destruction of, natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) such person's gross income from the harvesting of marine life for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, exceeds

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 532(a), the

amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) GENERAL RULE.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the balance in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United

States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subtitle.

(b) NO BORROWING FROM GENERAL FUND OF TREASURY.—Nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September

30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title.

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of such titles) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a

fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as the "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first trans-

ported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Lia-

bility Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Com-

merce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution,

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

That this Act may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

TITLE I—POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 102;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States,

(B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-

Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 103(b)(6) of this title;

(o) "navigable waters" means the waters of the United States, including the territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Spill Liability Fund. The amount of the fund may not exceed $200,000,000, except to the extent necessary to permit payment into the fund of moneys recovered or collected under subsections (b) (2) and (3) of this section. The fund shall be administered by the Secretary and the Secretary of the Treasury, as specified in this section. The fund may sue and be sued in its own name.

(b) The fund is constituted from—

(1) all fees collected pursuant to subsection (d);

(2) all moneys recovered on behalf of the fund under section 108;

(3) all other moneys recovered or collected on behalf of the fund, under this title.

(c) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

(d)(1) Subject to the provisions of section 202(b), of this Act, the Secretary of the Treasury shall collect from each refinery owner, and from the owner of each terminal receiving oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of oil received. Oil upon which a fee has been levied under this paragraph shall not be subject to subsequent levy hereunder. The person who owns such oil or has a royalty interest in such oil under the Outer Continental Shelf Lands Act, as amended, shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal: *Provided,* That whenever a fee is levied on oil that was produced under a lease agreement or other contract, under the authority of the Outer Continental Shelf Lands Act, as amended, that entitles a person to a payment calculated as a percentage of production, commonly referred to as a royalty, that person is considered to be the owner of that percentage of oil which constitutes a royalty, whether that royalty is paid in value or in kind.

(2) The Secretary of the Treasury, after consulting with the Secretary, shall, by regulation, establish the amount of the fee to be collected and procedures relating to the collection of the fee. No amendment to these regulations may become effective less than ninety days after publication of the amendment in the Federal Register. Any change in the amount of the fee shall be designed to insure that the fund is maintained at a level not less than $150,000,000 and not more than $200,000,000. No regulation that changes fees, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation.

(3)(A) Any person who fails to collect or pay fees as required by this section and the regulations issued under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected under paragraph (1) of this subsection, and the Secretary of the Treas-

ury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the fund.

(2) The Secretary of the Treasury may invest any excess in the fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and under regulations issued by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and form a part of the fund.

(f) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) loss of use of real or personal property;

(4) injury to, or destruction of, natural resources;

(5) loss of use of natural resources;

(6) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided,* That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further,* That where he is not enti-

tled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under items 2, 3, and 5, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 4, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided,* That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 6, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under item 7, by any State or political subdivision thereof;

(6) under items 2 through 7, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however,* That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(7) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(bb)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000

or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $2,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under section 103, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(bb), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this Act to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any

port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts

as the Secretary, by regulation, shall establish, but in no event less than $2,000,000.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

SEC. 106. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of

his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106(b), or

(2) where the owner or operator may recover under section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(a)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsection (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41

U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the pro-

duction by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section

104(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or

political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed

$10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) The Secretary may incur indebtedness on behalf of the United States, as provided in section 102(f), to the extent provided in appropriation Acts for that purpose.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of the fund during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of the fund and the administration of the liability provisions of this title.

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided,* That the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Spill Liability Fund established by section 102 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made. If the Secretary finds that—

(A) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to paragraph (4) of this subsection, the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 102(d) of this Act on barrels of oil, and the Secretary may waive such fee until such time as the total amount of the fees so waived equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified: *Provided,* That, should the fee due under section 102(d) of this Act be no longer required whereby the assets transferred and remaining can no longer be used as an advance payment, then the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel; or

(B) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary shall increase by 2 cents per barrel the fee imposed under section 102(d) on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(3) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(4) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under paragraph (2) of this subsection for the col-

lection or payment of fees established under section 102(d) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. The owner shall pay to the State of Alaska during such time as the collection or payment of fees under section 102(d) of this Act is waived.

(5) For purposes of paragraphs (2) and (3)—

(A) the term "barrels of oil" means only barrels of oil which would, but for the repeal made by paragraph (1), be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act;

(B) the term "Secretary" means the Secretary of the Treasury.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

> "(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Clause A of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be

reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsection (l) is further amended by striking out "subsections (c) and (i)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(l) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by section 102 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 203. No part of any moneys in the Comprehensive Oil Spill Liability Fund established by section 102 of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 204. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE III—HAZARDOUS SUBSTANCE LIABILITY

HAZARDOUS SUBSTANCE LIABILITY

SEC. 301. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"(19) 'supplier' means, with respect to subsection (k) of this section, any person who produces, manufactures, or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture, or importation, or a site that adjoins the site of production, manufacture, or importation, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture, or importation.

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (l) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), holds indicia of ownership primarily to protect his security interest in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(b) Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(C) loss of use of real or personal property;

"(D) injury to, or destruction of, natural resources;

"(E) loss of use of natural resources;

"(F) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

"(G) loss of tax revenue for a period of one year due to injury to real or personal property.

"(2) A claim authorized by paragraph (1) may be asserted—

"(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under items (B), (C), and (E) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (D) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided,* That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (F) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under item (G) of paragraph (1), by any State or political subdivision thereof;

"(F) under items (B) through (G) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(G) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (G) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2), (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under subsection (f), to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willfull misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(ci)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided,* That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k)(1) There is hereby established in the Treasury a revolving fund to be maintained at a level (except as provided in paragraph (8)) of not to exceed $100,000,000. Forty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (2) of this subsection. Twenty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (3) of this subsection. Twenty per centum to paragraph (4) of this subsection. Twenty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (5) of this subsection. Such fund shall be for the purpose of carrying out subsections (c), (d), (f), and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom), and hazardous substances. All sums appropriated to, or deposited in, the fund shall remain available until expended.

"(2) There is imposed upon each supplier of petrochemical feedstocks a fee, not to exceed 0.1 cent per pound, on any amount of petrochemical feedstock supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1). For the purposes of this paragraph, 'petrochemical feedstock' means liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals including, but not limited to, ethylene, propylene, butylenes, butadiene, butane, propanes, ethane, benzene, toluene, xylenes, naphthalenes, carbon black, and methane (other than methane used to make ammonia).

"(3) There is imposed upon each supplier of inorganic elements and compounds a fee, not to exceed one dollar per short ton, on any amount of inorganic element or compound supplier to another person or used by said supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

The inorganic elements and compounds subject to this fee are—

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide;

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate; and

"(E) such other inorganic elements or compounds as the Administrator may deem appropriate, based upon information available to him as a result of listing or characterizing hazardous substances under this section.

"(4) There is imposed upon each supplier of benzene, toluene, xylene, or styrene a fee, not to exceed 0.1 cent per pound, on any amount of such substances supplied to another person or used by such supplier. There is imposed upon each supplier of sodium hydroxide, hydrochloric acid, sulfuric acid, ammonia, nitric acid, and phosphoric acid a fee, not to exceed one dollar per short ton, on any amount of such substances supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

"(5) There is imposed upon each supplier of any substances listed in Committee Print 96-45 of the Committee on Public Works and Transportation of the House of Representatives a fee, not to exceed $1 per short ton, on any amount of such substances supplied to another or used by the supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

"(6) Any fees imposed by paragraphs (2) through (5), inclusive, shall be assessed and collected by the Secretary of the Treasury or his delegate, and the provisions of subtitle F of the Internal Revenue Code of 1954 shall apply to the assessment and collection of such fee as if such fee were a tax described in chapter 32 of such Code.

"(7) No earlier than 24 months after the enactment of this paragraph, and not more often than once per fiscal year thereafter, the Administrator shall adjust the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection to assure, to the extent reasonably possible, that the percentage of the total fees collected from each of the authorized sources is equitable, based upon the claims and payment experience of the fund. The Secretary of the Treasury shall establish the new fee schedule by regulation within ninety days of publication in the Federal Register of the Administrator's determination.

"(8) Any other funds received by the United States under this section shall also be deposited in the fund established by paragraph (1) of this subsection, along with the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection, for such purposes as are authorized in paragraph (1) of this subsection.

"(9) Two years after the date of enactment of this paragraph and annually thereafter, the Administrator is authorized to add to or delete from those substances covered by paragraph (4) of this subsection. Such additions or deletions shall be based on discharge history data, including frequency of discharge, volume of discharge, and the environmental damages incurred as the result of such discharge.

"(10) The recommendations of the Administrator as to substances which should be added to or deleted from those listed in paragraphs (2) and (3) of this subsection shall be submitted annually to Congress.".

SEC. 302. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial reponsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later, the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund under subsection (k). The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recoverable under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided,* That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the revolving fund established in subsection (k) of this section shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 303. Nothing in this Act or the amendments made by this Act shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 304. The last sentence of section 115 of the Federal Water Pollution Control Act is amended to read as follows: "Not to exceed $10,000,000 per fiscal year for fiscal years beginning after September 30, 1980, shall be available from the revolving fund established in section 311(k) of this Act for obligation to carry out this section.".

SEC. 305. (a) In any case where the revolving fund established in section 311(k) of the Federal Water Pollution Control Act is insufficient to carry out the purposes for which such fund is available, the Secretary of the Treasury is authorized to utilize funds in the Comprehensive Oil Spill Liability Fund established in section 102 of title I of this Act for such purposes. The Secretary of the Treasury shall, as soon as practicable, repay to such Comprehensive Oil Spill Liability Fund from the fees collected under section 311(k) of the Federal Water Pollution Control Act an amount equal to the amount utilized from such Fund.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

(b) In any case where the Comprehensive Oil Spill Liability Fund established in section 102 of title I of this Act is insufficient to carry out the purposes for which such fund is established, the Secretary of the Treasury is authorized to utilize funds in the revolving fund established in section 311(k) of the Federal Water Pollution Control Act for such purposes. The Secretary of the Treasury shall, as soon as practicable, repay to the revolving fund established in section 311(k) of the Federal Water Pollution Control Act from the fees collected under section 102 of title I of this Act an amount equal to the amount utilized from such Fund.

SEC. 306. In any case where the discharge of pollutants is a mixture of both oil and hazardous substances, both the Comprehensive Oil Spill Liability Fund and the revolving fund established by section 311(k) of the Federal Water Pollution Control Act shall be immediately available for payment of emergency work for any purpose for which either fund is available. The Secretary of the Treasury shall, as soon as practicable, make such adjustments in such funds as may be necessary to ensure that the costs of any such work are appropriately allocated to the proper fund.

SEC. 307. This title and the amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE IV

SEC. 401. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of this Act or of any amendment made by this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty,

and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 511. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definitions and special rules.

"SEC. 4601 IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a).

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced

shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed in a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Subchapter B—Tax on Certain Chemnicals

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene; butylene; butadi-

ene; butane; propane; benzene; toluene; xylene; naphthalene; methane; carbon black; ethane.

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other

substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.".

(b) CLERICAL AMENDMENT—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. ENVIRONMENTAL TAXES.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

PART I—ESTABLISHMENT OF TRUST FUNDS

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"),

consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable

damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Oil Pollution Trust Fund after September 30, 1985.

SEC. 522. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act, and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts

payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Hazardous Substance Trust Fund after September 30, 1985.

PART II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of opportunity to harvest marine life due to injury to, or destruction of, natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) such person's gross income from the harvesting of marine life for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, exceeds

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day

after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 532(a), the amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) GENERAL RULE.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the balance in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted

under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subtitle.

(b) NO BORROWING FROM GENERAL FUND OF TREASURY.—Nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in

such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields

on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title.

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of such titles) to a fund shall be deemed to be a

reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as the "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution,

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the

Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

[From the Congressional Record, Sept. 18, 1980, pp. H9227-H9228, H9231-H9250]

HOUSE DEBATE ON H.R. 85

PROVIDING FOR CONSIDERATION OF H.R. 85, COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 772 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

House Calendar No. 387

96TH CONGRESS
2D SESSION

H. RES. 772

[Report No. 96–1261]

Providing for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 27, 1980

Mr. LONG of Louisiana, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Providing for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes.

Resolved, That upon the adoption of this resolution it shall be in order to move, sections 401(a) and 402(a) of the Congressional Budget Act of 1974 (Public Law 93–344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution and shall continue not to exceed three hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute printed in the Congressional Record of August 27, 1980, by Representative Breaux of Louisiana as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. No amendment to title V of said substitute shall be in order except pro forma amendments for the purpose of debate and amendments recommended by the Committee on Ways and Means which shall not be amendable except by pro forma amendments. After the consideration of title V of the substitute made in order as original text by this resolution, and any amendments thereto, no further amendment to the bill shall be in order. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 2000

The **Speaker** pro tempore (Mr. Brademas). The gentleman from Louisiana Mr. Long is recognized for 1 hour.

Mr. **Long** of Louisiana. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Mississippi (Mr. Lott), pending which I yield myself such time as I may consume.

(Mr. Long of Louisiana asked and was given permission to revise and extend his remarks.)

Mr. **Long** of Louisiana. Mr. Speaker, House Resolution 772 provides for the consideration of the bill H.R. 85, to provide a comprehensive system of liability and compensation for oilspill damage and removal costs and for other purposes. This rule is an effort to achieve orderly consideration and amendment of a very complicated legislative package over which three committees of the House have exercised jurisdiction.

The rule provides for 3 hours of general debate with the time equally divided and controlled by the chairmen and ranking minority members of the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means.

The rule makes in order as original text for the purposes of amendment a compromise amendment in the nature of a substitute printed in the Congressional Record of August 27, 1980, by my colleague from Louisiana (Mr. Breaux).

Mr. Speaker, this legislation would establish two funds to clean up oil and chemical spills into navigable waters and to compensate the victims of such spills [Sec. 221]. The bill establishes levels of strict liability for vessels and facilities up to a maximum which is intended not to exceed the amount of insurance the owner can obtain [Sec. 107]. The Public Works Committee added the second fund to the bill reported by the Committee on Merchant Marine in order to provide compensation for damage resulting from the pollution of navigable waters with hazardous chemicals. This title is not to be confused with legislation reported by the Committees on Interstate and Foreign Commerce and Ways and Means, also known as a superfund bill, but which would provide for the cleanup of abandoned and inactive hazardous waste sites.

Ways and Means reported a substitute, now incorporated into the Breaux substitute, which establishes two trust funds: one for the cleanup and compensation of victims of oilspills and the other for the cleanup and compensation of victims of spills of hazardous substances [Sec. 221]. The Ways and Means substitute, title V of the bill, imposes an excise tax of 1.3 cents per barrel of domestic crude oil and on imported crude oil and petroleum products for fiscal years 1981 through 1985. It imposes, for the same 5-year period, an excise tax of $1.18 per ton on the manufacturer, producer, or importer of specified petrochemical feedstocks, and an excise tax of 31 cents per ton on specified inorganic substances. Petroleum feedstocks used as fuel are exempt from the chemical tax.

The Ways and Means substitute allows claims for economic losses resulting from property or natural resource damage during the 2 years following a spill incident as long as the claimant derives at least 25 percent of his income from activities which utilize the damaged property or destroyed resource.

Mr. Speaker, this rule provides an orderly process for floor procedure. The first reading of the bill will be dispensed with. The first four titles of the bill will be open to amendment. Title V, reported by Ways and Means will be subject to amendment only by pro forma amendments for the purposes of debate and by Ways and Means Committee amendments which are not amendable except by pro forma amendments for debate. After consideration of title V and any amendments thereto, no further amendments to the bill will be in order. The Breaux substitute will be read for amendment by titles, and each title will be considered as having been read for amendment. The rule provides for one motion to recommit with or without instructions.

This rule includes several waivers of points of order. Clause 7 of rule XVI, the germaneness rule, is waived against the Breaux substitute, which includes the tax provisions reported by Ways and Means, which were not a part of the original bill. The provisions of clause 5, rule XXI are also waived against the Breaux substitute since the trust funds, transfer of general revenue funds to the trust funds, and payment therefrom are not subject to appropriations acts.

The rule also grants two waivers of the Congressional Budget Act against consideration of the bill. Section 401(a) bars the consideration of a bill providing new contract authority unless it is limited to the extent or amounts provided in advance through appropriations acts. Section 402(a) requires that new budget authority for a fiscal year must be reported on or before May 15 preceding the fiscal year in which the budget authority becomes effective. The Breaux substitute cures the violation.

Mr. Speaker, this is extremely important and complex legislation which has been in the works for more than 6 years. It should be enacted without further delay so that we can protect our fragile environment from large-scale spills of oil and hazardous substances. The rule presented by House Resolution 772 provides a fair and orderly method whereby the House may work its will on this timely legislation. I urge the adoption of this rule.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Lott asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, I am sure that we are all aware of the considerable amount of time that has gone into consideration of the "superfund" legislation. The bill is finally before this body, after extensive deliberation by three House committees and, in fact, after deletion of "superfund" provisions from the budget reconciliation legislation. Those provisions were stricken from the reconciliation bill, you will recall, to give the House an opportunity to consider H.R. 85 on its own merits and to avoid prejudging what might take place when the bill did finally reach the House.

Consideration of the measure could have been made very difficult, since the individual committees did report separate versions of the bill and since there are areas of conflict. However, a substitute version of H.R. 85 incorporates Ways and Means Committee changes into the bill reported by the Merchant Marine and Public

Works Committees. The rule before us takes into account the agreement reached by the committee members.

House Resolution 772, a modified closed rule, has been adequately explained already. There are two waivers of the Budget Act. Section 401(a) and section 402(a) are waived against consideration of the bill. The debate time is to be divided among the three committees having jurisdiction over the bill.

However, instead of the amendments recommended individually by the three committees, the Breaux substitute is made in order as an original bill for amendment. It is to be read by titles instead of sections, with each title to be considered as having been read.

House Resolution 772 next waives clause 7 of rule XVI (the germaneness rule) and clause 5 of rule XXI (dealing with appropriations in a legislative measure) against the substitute.

Title V of the bill is the Ways and Means title of the bill. No amendments are made in order to this title except pro forma amendments and Ways and Means Committee amendments. These are not amendable except by pro forma amendments for the purpose of debate.

After consideration of title V and amendments to it, no further amendments of the bill are in order.

Lastly, the rule provides one motion to recommit with or without instructions.

I would like my colleagues to know that, under the circumstances of such complex legislation, I feel that this is about the best rule we could have. And, in fact, I supported it when it was reported from the Rules Committee on August 27.

The legislation itself is another matter.

As a Member from a coastal district, I am very familiar with the problems of oil spills into navigable waters and I am keenly aware of the necessity of cleaning up these contaminated waters quickly.

I do, however, have some reservations about the specific funds which are created by the bill. For example, the inclusion of the hazardous substances fund would be more appropriately considered separately and on its own merits, without jeopardizing the rest of this legislation.

Further, determining liability limits for hazardous waste pollution is extremely complex and is an issue which deserves special treatment which would be responsive to this particular problem.

It is likely that a number of amendments will be offered to H.R. 85. The pending rule allows such amendments and I have no objection to the rule itself.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. BIAGGI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. Biaggi). The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 85, with Mr. Natcher in the chair.

The Clerk read the title of the bill.

The CHAIRMAN, Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from New York (Mr. Biaggi) will be recognized for 30 minutes, the gentleman from Kentucky (Mr. Snyder) will be recognized for 30 minutes, the gentleman from Texas (Mr. Roberts) will be recognized for 30 minutes, the gentleman from Kentucky (Mr. Snyder) will be recognized for an additional 30 minutes, the gentleman from Illinois (Mr. Rostenkowski) will be recognized for 30 minutes, and the gentleman from New York (Mr. Conable) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. Biaggi).

Mr. BIAGGI. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. Rostenkowski).

Mr. ROSTENKOWSKI. Mr. Chairman, H.R. 85 deals with an extremely important environmental problem—damage to natural resources and property and loss of income which results when oil and hazardous substances spill into navigable waters. All too frequently, the press reports the destruction which oil and chemical spills can cause to natural resources and to property, the disruption which they can cause to individuals' livelihoods, and the enormous costs which are necessary to remove these pollutants and to clean up the damage. Current programs are inadequate to deal with this problem. A reliable and available source of funds is urgently needed to assure prompt response to discharges of oil and hazardous substances. Title V of this bill, which was added by the Ways and Means Committee, provides these necessary funds.

Title V establishes trust funds whose balances are immediately available to pay removal costs and specified damages resulting from spills of oil and hazardous substances [Sec. 221]. Under procedures provided in other titles of this bill, individuals may be reimbursed directly by the funds for these costs and damages, thus sparing them from a costly and lengthy course of litigation [Sec. 112]. In turn, the funds, in most cases, will recover these costs from responsible parties under the strict liability provisions established elsewhere in the bill [Sec. 107]. However, in some cases, the funds will not be able to recover claims payments. This will occur, for example, if the spiller cannot be identified, or, in spite of the bill's stringent financial responsibility requirements, the spiller is unable to bear the financial burden of these claims. Thus, amounts must be available to pay claims which have not yet been recovered and which may never be recovered.

The new excise taxes in title V of the bill provide the necessary amounts for the trust funds [Sec. 211]. They reflect the judgment that the most appropriate way to raise funds to respond to discharges of oil and hazardous substances is through a tax on oil, and on the petrochemical feed stocks and inorganic substances used to produce hazardous substances. These new taxes will raise approximately $150 million per year for 5 years.

EXCISE TAXES

Title V of the bill imposes two new excise taxes—a tax on crude oil and petroleum products, and a tax on petro-chemical feed stocks and specified inorganic chemicals.

The oil tax is 1.3 cents per barrel of domestic or imported crude oil or imported petroleum products. This tax will be collected at the refinery or at the point of import or export. The tax will generate approximately $75 million per year and will terminate after September 30, 1985.

The chemical tax consists of two parts—a tax of $1.18 on each ton of 13 specified feed stocks, and a tax of 31 cents on each ton of 23 specified inorganic substances. The tax is imposed on the producer or importer of the feed stock. For any petrochemical feed stock a principal use of which is as a fuel, the tax will not apply to fuel use; thus, for example, fuel use of methane will be exempt from the tax. The tax will not be imposed more than once on the same substance. The tax will generate approximately $75 million per year ($50 million from petrochemical feed stocks and $25 million from inorganic substances) and will terminate after September 30, 1985.

TRUST FUNDS [Sec. 221]

Title V of the bill establishes two trust funds—the comprehensive oil pollution trust fund and the hazardous substance pollution liability trust fund. These trust funds receive the revenues of the oil and chemical taxes, respectively, and are used for damages and removal costs resulting from oil spills and hazardous substances, respectively. Penalties and recoveries from responsible parties also are deposited in the funds. In general, other provisions governing the operation of the trust funds apply uniformly to the two funds.

The trust funds may be used for paying claims for compensable damages, as defined in title V. Compensable damages include:

First: Removal costs.

Second: Injury to, or destruction of, real or personal property.

Third: Injury to, or destruction of, natural resources; and

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, for a 2-year period after a loss is first suffered, by individuals who derive more than 25 percent of gross income from activities which utilize the property or natural resources.

It should be noted that the Ways and Means Committee devoted considerable time to the definition of which damages are compensable from the funds; the committee balanced the need for quick compensation to affected parties against the difficulty of measuring certain damages and, thus, of estimating potential claims against the funds. The trust funds may be used only for the above damages as they were generally defined in the bill as reported by the Merchant Marine and Public Works Committees since this was the context in which the Ways and Means Committee made its decision. For example, since the Ways and Means Committee specifically rejected use of the trust funds to compensate for loss of use of real property, loss of use of natural resources, or loss of tax revenue, these uses may not be read into the definitions of other compensable damages under title V.

The bill also provides various limitations on claims payments. The only amounts available for claims payments are amounts in the trust funds [**Sec. 222(b)**], and, to insure that amounts are always available for emergency response, claims may not be paid for any amounts other than removal costs to the extent that such payments would reduce the balance in a fund below $30 million. The two funds may borrow from each other as needed, subject to the $30 million minimum balance restriction. In addition, each fund may borrow from the Treasury, before September 30, 1981, up to $75 million in order to be sure that sufficient amounts are available during the first year of operation [**Sec. 223(c)**].

In conclusion, title V raises revenues and provides for their use in a balanced, responsible manner. This legislation will provide a valuable tool in dealing with the disruptions and threats to public welfare caused by spills of oil and hazardous substances.

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Mr. Chairman, I have no further requests for time on behalf of the Ways and Means Committee on this side, and I yield back the balance of my time.

(Mr. Rostenkowski asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, I yield as much time as he may consume to the distinguished majority leader, the gentleman from Texas (Mr. Wright).

(Mr. Wright asked and was given permission to extend his remarks.)

Mr. WRIGHT. Mr. Chairman, throughout the 1960's and early 1970's we in the Congress worked long and hard to find answers to our Nation's water problems. Finally in 1972, over the veto of President Nixon, we enacted the most comprehensive environmental program in our Nation's history. Its purpose was to restore and maintain the chemical, physical and biological integrity of the Nation's waters.

That program dealt principally with surface waters, with rivers, lakes and streams, and it provided $18 billion in grants to the States for construction of waste treatment plants. After many delays that program has progressed apace.

Unfortunately, threats to the quality of the Nation's water supply still exist. As the two bills before the House today recognize, the purity of our water supply is threatened not only from oil and chemical spills into surface waters, including coastal bays, but also from the improper disposal of hazardous wastes throughout our environment.

What we are discovering is that nature's processes, which have filtered biological wastes since the beginning of time, cannot be depended upon to filter out and neutralize many of the new compounds we have created in the laboratory.

Valuable as many of these chemical compounds are, they pose a threat to our environment unless proper measures are taken to prevent their drainage into surface waters or seepage into our underground aquifers.

Perhaps the greatest threat we face today is in the number of water wells that are being contaminated by chemicals. Granted, half of our drinking supply comes from surface waters. But that means that the other half comes from ground water.

Nature protects us from biological impurities by percolating rain water through soil and porous rock to vast underground aquifers. In some cases it may take a century to penetrate to that depth.

But it seems that nature has no way of removing many chemical substances from these waters. And now we are finding that many petrochemicals thought to have been harmlessly disposed of long ago are showing up in wells on which we depend for our water supplies.

The legislation we will consider later today or tomorrow, H.R. 7020, will provide a trust fund to clean up the many dangerous chemical dumps we have in this country.

At the same time the bill now before us, H.R. 85, attacks another part of the problem, oil and chemical pollution of navigable waters. And this bill defines navigable waters, and wetlands, in a far more sensible way than the interpretations which have come to be placed upon Public Law 92–500, the Water Pollution Amendments of 1972, which for the first time set water quality standards for surface waters of the Nation and provided $18 billion in Federal grants to the States for the construction of waste treatment plants to clean up those waters.

That bill also directed the Administrator of the Environmental Protection Agency to study the special pollution problems arising from oil spills, marine sewage equipment, pesticides, waste oil, and other such causes.

What has been learned since then confirms the need for a program that will insure rapid cleanup of both oil and chemical spills and provide adequate compensation for damages. Time is of the essence in these incidents. There is always ample time later to determine who are the responsible parties and to assess damages upon them. What this bill does is set up a mechanism to take care of both needs—timely response to an oil or chemical spill, and appropriate assignment of damages.

An example is the devastating blowout of the Campeche Bay, Mexico, last year. While this spill occurred off the coast of Mexico, the oil spread to the coastline of Texas and did considerable short-term damage and as yet undetermined long-term damage to the ecology of the barrier islands and coastal environment of Texas. If any such spill should occur in the future, there would be a mechanism in place to pay for the cleanup whether or not responsibility could be fixed for the incident.

It is a source of considerable satisfaction to me that these two bills have been developed simultaneously. They speak well for the dedication of the committees involved.

I particularly want to commend the committees for going beyond the original proposal to establish an oil spill fund by proposing a hazardous substance fund as well. This was not an easy thing to do, for it amounted to breaking new ground. And yet a bill devoted to the cleanup of pollution that failed to provide for hazardous substances would leave the people of this country unprotected in the case of serious chemical spill.

The House today is responding to a number of very serious problems facing our people. In one sense it might be easier to put them off to another day, for there are people who do not want to see the Federal Government playing any more of a role than it is already. But decisive action is needed if we are to avoid future catastrophes.

Clean, safe water is basic to all life. We cannot, we must not take chances that might endanger our Nation's water supply. I urge the passage of both H.R. 85 and H.R. 7020.

Mr. BIAGGI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 85 contains five titles. Title I covers liability and compensation for oil pollution. Title III relates to liability and compensation for spills of hazardous substances. Title V establishes trust funds to deal with both oil and hazardous substances cleanup and compensation. Titles II and IV contain conforming amendments and sup-petroleum products.

My remarks today will concern those portions of H.R. 85 that relate to oil spill liability and compensation.

For several years, the Congress has been dealing with the problem of oil pollution in our navigable waters and off our coasts. During those years, we have made significant strides in preventing oil spills and the accidents that cause them.

We have enacted legislation that has raised the standards for construction and operation of oil tankers.

We have given the Coast Guard broad powers to regulate vessels carrying petroleum products.

We have authorized the Coast Guard to establish and operate vessel traffic services in our ports.

We have raised the standards for personnel on board tankers.

We have prescribed meaningful penalties for violations of the laws or regulations affecting oil transporters.

And, we have provided the Coast Guard increased funds and personnel to inspect oil-carrying vessels and facilities.

In short, the Congress and the executive agencies have taken strong and effective action to prevent oil spills.

In the bill before us today, we recognize that, despite all our efforts, oil spills will continue to occur. Because of the massive amounts of oil that are transported and produced in the United States, and because human beings are involved, some accidents are inevitable. We will continue our efforts to prevent oil spills, but I think we must admit that it is impossible to eliminate them. That being the case, we need a mechanism to deal with the consequences of oil spills when they do occur. H.R. 85 provides that mechanism.

In brief, the purpose of H.R. 85 is to insure that oil spills are promptly cleaned up and that persons who are damaged by oil spills are promptly compensated. To achieve these purposes, the bill follows the legislative pattern of, and incorporates, the Outer Continental Shelf Lands Act Amendments of 1978 and the Trans-Alaska Pipeline Authorization Act. Its enactment will result in a single comprehensive oil pollution liability and compensation scheme.

I think all Members should understand that the compensation for oil spill cleanup or damage proposed in this bill will not come from the Federal Treasury. The bill will not result in increased Federal expenditures. Instead, the bill provides that moneys for cleanup and compensation will come from the one who spills the oil [**Sec. 107**]. If the one who spills the oil cannot be identified, or refuses to pay for cleanup or for damage, then the compensation will come from a trust fund supported by a tax on oil [**Sec. 211**]. In brief, the bill will have no significant effect on the Federal budget.

During the past several weeks, as this bill has been considered by the Rules Committee and the Ways and Means Committee, most of the discussion has centered on the trust fund that is created by the bill to clean up oil spills and to compensate those damaged by such spills. I think this emphasis on the fund provisions of the bill is unfortunate. While the fund is an important part of the bill, it is only one of the mechanisms that the bill utilizes to achieve its purposes [**Sec. 221**].

It is important to remember that the fund is designed to be a "backup" fund. That is, it is there to be used only if the spiller of oil, for one reason or another, does not clean up the spill or compensate those injured by the spill. The bill places front-line responsibility on the spiller of oil to clean it up and to compensate its victims. It makes the spiller strictly liable for the consequences of oil spills—it removes many of his common law defenses—and, in effect, the bill gives the victim a Federal cause of action against the spiller [**Sec. 107**].

Under the bill, we expect that, in the great majority of the cases, the spiller will clean up the spill and pay any claims resulting from it. The bill has incentives in it for him to do just that. Therefore, the Fund will only be called upon in those cases where the spiller is not known or where the spiller denies responsibility and refuses to pay. In the latter case, the Fund will pay the claims, and for cleanup, and then act to recover from the person who spilled the oil.

Thus, the chief emphasis in the bill is on the entity that spills the oil. That entity is made strictly liable for the consequences of the spill—is required to report it—is required to clean it up—and is required to compensate those damaged by it.

The bill also contains a requirement that transporters and producers of oil demonstrate financial responsibility to pay for the consequences of an oilspill [**Sec. 108**]. They must either qualify as a self-insurer or obtain insurance up to their limit of liability. Demonstration of this financial responsibility is a condition for use of our navigable waters by any vessel transporting oil, foreign or domestic. These provisions are designed to eliminate the possibility that oil will be carried by transporters who are financially insecure.

The financial responsibility provisions are also designed to eliminate claims against the Fund based on inability of the spiller to pay for cleanup and compensation. The Fund would only be called on where the costs of the spill exceed the limits of liability of the spiller, since, even if the spiller were unable to pay, his insuror would. Based on the past history of oilspills, cases where the costs of the spill exceed the limits of liability should be rare.

The bill requires that, with only limited exceptions, all claims must be first presented to the spiller [Sec. 112]. The spiller has 60 days in which to pay the claim or to deny his liability. If he denies the claim, the claimant can sue in Federal court or present his claim to the Fund. The Fund also has 60 days in which to act on the claim. If the Fund denies the claim, the claimant may appeal to the Secretary of Transportation or sue the Fund in Federal court.

The net effect of these provisions is to create a system for the rapid compensation of persons damaged by oil spills. These provisions also constitute an incentive for the spiller to settle claims, since, if he does not, he runs the risk of facing the Federal Government in court rather than an individual claimant. Thus, the spiller has nothing to gain, and quite a bit to lose, by failing to pay legitimate claims.

An important feature of this bill is the provision that makes a ship or facility owner and operator jointly, severally, and strictly liable for all damages from an oil spill from that ship or facility [Sec. 107]. This relieves a claimant from the necessity of proving negligence on the part of the vessel or facility.

On the other hand, the bill provides limits of liability for the various types of vessels and facilities. These limits are set sufficiently high that they are expected to cover all but the most extreme spills, but at a level that is insurable in today's insurance markets. The liability limits are not available to a spiller of oil if he is guilty of willful misconduct or gross negligence or of a violation of a Federal safety standard or regulation.

The bill contains extensive procedural and administrative provisions that are designed to facilitate cleanup of oil spills and payment of claims. It also contains a section that vests jurisdiction for oil spill claims in Federal court [Sec. 113] and prevents a State from creating a fund to accomplish the same purposes for which the fund in this bill is designed [Sec. 114]. The effect is to provide a uniform law to replace the multitude of varying State statutes on liability and compensation for damage from oil spills. Such uniformity is especially important in the case of vessels. The bill, however, leaves the States free to enforce State environmental laws—or to establish funds for the acquisition of pollution abatement equipment or for monitoring or research programs.

Mr. Chairman, this bill has been carefully developed over a period of several years. It has had the benefit of extensive hearings, numerous witnesses, and close scrutiny by the oil and insurance industries—environmental groups—the executive branch—the States—shipowners—drillers—and others. In its present form, it is generally acceptable to all interested and affected parties. I urge its enactment.

Before concluding my remarks, Mr. Chairman, I would like to note that—during the last few weeks—a great deal of concern has surfaced from several States as to the effect of this bill on existing State laws and State funds. Several States are concerned that H.R. 85 may restrict use of their existing funds or subject them to lawsuits if they expend those funds for oil pollution cleanup or compensation after the effective date of this bill.

Let me state categorically that there is nothing in this bill that affects the uses to which a State may put an existing oil spill fund. H.R. 85 is silent on that subject. Thus, a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law. If, after enactment of H.R. 85, a State continued to pay oil pollution damage claims from its State fund, that would not be contrary to any provision of H.R. 85.

What H.R. 85 does is to prohibit a State from requiring any person to contribute to any fund if the purpose of that fund is to compensate for an oil spill damage claim as defined in title V of the bill. Thus, the State cannot impose a fee or a tax on oil if that fee or tax is to go into a fund and the fund is for the purpose of paying oil spill damage claims.

Putting it simply, it is a prohibition against double taxation of the same purposes. It is not a prohibition on the uses that a State may make of its money. Nor does it prohibit a State from imposing fees or taxes for other purposes connected with oil pollution—such as the purchase of pollution abatement equipment or the hiring or training of personnel for pollution prevention programs.

In sum, this preemption provision is narrow in scope and limited to the particular purpose of preventing double taxation. I would be happy to discuss the effects of the preemption provisions of H.R. 85 further if any member needs additional clarification.

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Mr. Florio. Mr. Chairman, will the gentleman yield?

Mr. Biaggi. I yield to the gentleman from New Jersey.

(Mr. Florio asked and was given permission to revise and extend his remarks.)

Mr. Florio. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the State of New Jersey has been and remains a strong proponent of the superfund legislation pending in the House and the Senate. We have been grappling with the serious environmental and health problems stemming from discharges and illegal and improper disposal of hazardous wastes and oil for several years. In 1977, the New Jersey Legislature enacted a comprehensive statute covering discharges of oil and chemicals into surface and ground waters and onto land. The statute was amended in 1980 to expand coverage to include abandoned hazardous waste disposal sites and certain other "ancient" source discharges. The major source of revenues for the New Jersey Spill Compensation Fund is a tax applied to transfers of petroleum and a tax on nonpetroleum hazardous substances.

New Jersey and several of the other States with successful State spill funds (including Michigan, Florida, California, Maryland, and New York) have on repeated occasions expressed grave concerns that the preemption language contained in H.R. 85 (and the Breaux substitute) may work to slow down governmental response to spills of oils and hazardous wastes by creating questions as to the availability of State and or Federal funds to provide operating, up front dollars to finance emergency cleanup and containment actions. I understand the concern debated over the years in conjunction with superfund that industry not be forced to suffer a double tax for the same functions carried out by different levels of government. I also undertstand that it is not the intent of the sponsors of H.R. 85 to make prompt, effective and thorough response to such discharges more cumbersome.

Mr. Chairman, in order to clarify the remaining questions concerning allowable State activity under H.R. 85's preemption language, I wonder if the gentleman from New York would consent to respond to a few questions on this issue.

Am I correct in understanding that it is the purpose of section 110 to prohibit States from requiring any person to contribute to a fund for the purpose of reimbursing claims as described in title V?

Mr. BIAGGI. Yes, that is the clear intent. The purpose is to prohibit States from creating duplicate funds to pay damage compensable under H.R. 85.

Mr. FLORIO. However, there is no such preemption of a State's ability to collect such taxes or fees for other costs associated with spills and discharges of oils and hazardous substances that are not compensable damages as defined in this legislation or that do not occur in or threaten the navigable waters of the United States.

Mr. BIAGGI. The gentleman is correct.

Mr. FLORIO. There is nothing in the language or intent of H.R. 85, section 110 or elsewhere in the bill which would prohibit a State from responding to a spill or discharge either under agreement with the Secretary, at the direction of the Federal on-scene coordinator or in the absence of timely response by any other party. In fact, the Federal Government's cleanup and containment capability is viewed as something of an appeal of last resort in the absence of any other adequate and timely response, if my understanding is correct.

Mr. BIAGGI. Yes, the gentleman understands the intent of the bill correctly.

Mr. FLORIO. In the event I have described, where a State or a contractor of the State is the respondent to the spill or discharge and incurs economic loss normally compensable under the provisions of H.R. 85, does this legislation intend that a State that has continued to collect taxes or fees to finance a State fund designed to cover expenses and economic loss not covered under the provisions of H.R. 85 have the right to use those State fund moneys to provide intermediate, up front capital to pay for these activities and seek reimbursement from the Fund established under H.R. 85.

Mr. BIAGGI. Nothing in the language or intent of H.R. 85 would prohibit a State from using its fund for the purposes you have inquired about. The purpose of section 110 is simply to preempt double taxation of the substances enumerated in the bill for the purposes of compensation of the covered damage. The situation described in your inquiry is a question of bookkeeping rather than a subject of preemption. The expenditures by a State from its fund are temporary in nature and would be reimbursed and therefore ultimately paid from the Fund established in this legislation. Any damage not reimbursed by the H.R. 85 fund may similarly be the proper subject of a State fund if a State so chooses to construct its fund. Finally, H.R. 85 is not retroactive in its preemption. The preemption provision will take effect 180 days after the enactment of this bill. Any funds collected or generated by a State fund prior to this date may be spent under the provisions and coverage of the appropriate State guidelines without conflict with H.R. 85.

Mr. FLORIO. Mr. Chairman, I thank the gentleman from New York (Mr. Biaggi).

Mr. BIAGGI. Mr. Chairman, let me state categorically that there is nothing in this bill that affects the uses to which a State may put the existing oilspill fund. H.R. 85 is silent on that subject. Thus, a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law.

If, after enactment of H.R. 85, a State continued to pay oil pollution damage claims from a State fund, that would not be contrary to any provisions of H.R. 85. What H.R. 85 does is to prohibit a State from requiring any person to contribute to any fund if the purpose of that fund is to compensate for an oilspill damage claim as defined in title V of the bill. Thus the State cannot receive a fee or a tax on oil if that fee or tax is to go into a fund and the fund is for the purpose of paying oilspill damage claims.

Putting it simply, this is a prohibition against double taxation for the same purposes. It is not a prohibition on the uses that a State may make of its money, nor does it prohibit a State from imposing fees or taxes for other purposes connected with oilspills, such as the purchase of pollution abatement equipment or the hiring or training of personnel for pollution prevention programs.

In summary, Mr. Chairman, this preemption provision is narrow in scope and limited to the particular purpose of preventing double taxation.

Mr. Chairman, I urge enactment of the bill.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, in connection with the colloquy which the gentleman had with the gentleman from New Jersey (Mr. Florio), could we carry his question one step further? Let me ask the gentleman this question for clarification:

In the case of revenues already in an existing State fund, will it be possible to use the revenues in that State on an ad hoc or temporary basis to make expenditures for purposes covered by H.R. 85 on a revolving basis, with the State fund being reimbursed from the Federal fund?

Mr. BIAGGI. Mr. Chairman, if I understand the question correctly, the notion is to use the present funds for the purpose of H.R. 85?

Mr. SNYDER. Just for clean-up and on a temporary, ad hoc basis.

Mr. BIAGGI. Yes, that is perfectly permissible, and the State or the trustees of that fund can then come against the fund in H.R. 85.

Mr. SNYDER. Mr. Chairman, I have a number of direct questions for the gentleman from New York with respect to the Federal preemption of certain activities now undertaken or contemplated by the States. My purpose is to get a precise definition of the boundaries of preemption from the standpoint of a State like New Hampshire, which now has an industry-financed revolving fund for response to oilspills and which is likely to establish a similar mechanism for toxic and hazardous substances.

As I understand it, the purpose of the bill's preemption provision is to prevent the States and the Federal Government from imposing a double burden on industry by levying taxes or fees to support funds that finance essentially the same types of activities.

Now, as I mentioned, New Hampshire has an emergency response capability in the case of oilspills financed by a tax on petroleum. And I understand that, once H.R. 85 is enacted, it will no longer be permissible to generate revenue for that fund if those revenues are to be expended for purposes which are compensable under H.R. 85.

My first question is this: In the case of revenues already in this existing State fund, will it be possible to use the revenues in that fund, on an ad hoc or temporary basis, to make expenditures for purposes covered by H.R. 85 on a revolving fund basis—with the State fund reimbursed by the Federal fund? It would appear to me that there would be no duplication there as long as no further levies for such purposes occur after the enactment of H.R. 85.

Mr. BIAGGI. The gentleman is correct. The preemption in this bill applies only to the financing of funds and the purposes for which their revenues are raised subsequent to the enactment of H.R. 85. Existing State funds may continue to be used for any purpose authorized by State law. H.R. 85 does not restrict the manner in which a State may expend any of its funds. It only restricts the raising of funds by a State.

I would only add that we can conceive of many instances in which States will incur costs for activities compensable under this act, use State funds for these purposes, and obtain reimbursement from the fund created by this act. The only effect of the preemption provision in this instance is to prohibit the raising of a State fund created by a tax or fee on oil and operated for the same purposes as H.R. 85 subsequent to enactment of H.R. 85.

Mr. SNYDER. Further with respect to the existing State fund, will it be permissible for the State of New Hampshire to maintain that fund and continue raising revenues for that fund and any purposes other than those covered by H.R. 85? Specifically, I refer to maintenance of a State staff as well as the purpose of prepositioning of equipment and materials for cleanup.

Mr. BIAGGI. The preemption provision in H.R. 85 would not prohibit the maintenance and operation of such a fund as the gentleman mentions for the purposes he cites.

Mr. SNYDER. In fact, cannot the State fund and the revenue system supporting it be maintained and used for any purpose, including compensation of damages, and cleanup for which the fund created by H.R. 85 is not available?

Mr. Biaggi. Again, I would say to the gentleman that it is not the intent of H.R. 85 to preempt the States from financing by whatever means they choose those activities which are not compensable under H.R. 85.

Mr. Breaux. Mr. Chairman, will the gentleman yield?

Mr. Biaggi. I am delighted to yield to the gentleman from Louisiana.

(Mr. Breaux asked and was given permission to revise and extend his remarks.)

Mr. Breaux. Mr. Chairman, I rise in support of the bill. This legislation in various forms has been before the Congress for a number of years. Finally, in this Congress, we have been able to work out a compromise which not only addresses the problems of oilspills and hazardous substance spills in a rational way, but also fairly incorporates the views of the three committees involved.

H.R. 85 was originally reported by the Committee on Merchant Marine and Fisheries. That committee's version of the bill dealt only with oilspills. Our committee on Public Works and Transportation, to which the bill was jointly referred, added a new title III dealing with spills of hazardous substances. The committee's rationale for doing this was that it was both logical and proper to treat hazardous substances the same as oil in this bill, since the two are treated the same in section 311 of the Federal Water Pollution Control Act which provides for the cleanup of, and liability for, spills.

Titles I and III provided for the collection of fees on petroleum and organic and inorganic feedstocks **[Sec. 211]**. These fees were to be deposited in funds which would be available for the cleanup of spills and for the payment of claims for certain economic damages suffered as a result of these spills.

The bill was then sequentially referred to the Committee on Ways and Means because of its revenue raising aspects. This committee provided for the imposition of excise taxes on petroleum and organic and inorganic feed stocks in lieu of fees. It also established two trust funds in the Treasury which are available to pay claims for specified economic damages, including removal costs and other costs associated with the evaluation claims **[Sec. 221]**.

The recoverable damages in the Ways and Means' version were not as extensive as in the other two committees' versions. The Ways and Means Committee deleted damages due to the loss of use of real or personal property or natural resources, loss of tax revenues, and loss of profits not associated with the harvesting of marine life. That committee subsequently met a second time and restored damages relating to loss of profits due to injury or destruction of real or personal property or natural resources.

The other two committees agreed with this revised version of the Ways and Means Committee as an acceptable compromise. We then developed the "Breaux substitute" which represents a combination of the three committees' versions of the bill. All three committees have agreed to this and the Rules Committee provided that this substitute would be considered as the original bill for purposes of floor action.

Mr. Chairman, this bill represents a sound approach to the serious problems associated with the cleanup of spills of oil and hazardous substances, the compensation of victims who suffer damages from these spills, and the imposition of liability on those who cause them. The owners and operators of vessels and onshore and offshore facilities are made jointly, severally, and strictly liable for discharges of oil or hazardous substances **[Sec. 107]**. They are required to maintain evidence of financial responsibility to cover their liability **[Sec. 108]**. Two trust funds are established—one for oil spills and one for hazardous substance spills—which are available to pay cleanup costs and claims for damages **[Sec. 221]**. The funds can then recover these costs where the spiller is known and liability can be established.

Legislation such as H.R. 85 has long been needed. It will provide a just mechanism for liability and compensation as well as encouraging the use of greater care in the manufacturing, handling, and transportation of oil and hazardous substances. I strongly urge passage of the bill.

Mr. STUDDS. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Massachusetts (Mr. Studds), a member of the committee.

(Mr. Studds asked and was given permission to revise and extend his remarks.)

Mr. STUDDS, Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of H.R. 85, most particularly the oilspill components thereof.

I just want to take one moment, if I may, to extend my appreciation to the gentleman from New York (Mr. Biaggi).

It is with some disbelief that I find this oilspill legislation once again before us, with the third consecutive Congress considering this legislation. The Committee on Merchant Marine and Fisheries reported legislation in the 94th Congress, and as the gentleman well knows, not only this House but the other body passed this legislation in the 95th Congress. And we are still here again in a third consecutive Congress attempting finally to get it into law.

It has now been 4 years since the *Argo Merchant* went aground off the shores of Nantucket, and one would have supposed that even this institution would have been able to respond somewhat more expeditiously than we have.

It has been almost 2 years since the *Amoco Cadiz* tragedy decimated the cost of Brittany in northwestern France. The time has long since come for this Congress to act both to provide, as the gentleman has said, an incentive to those who carry oil through the waters to take all such precautions as are humanly possible to avoid those spills and a means that is prompt and equitable to pay those who may be damaged by spills.

I suspect the owners of the *Argo Merchant*, whoever they may be—or whoever owns the owners of the owners, if we can find an answer to that puzzle—would not have had that ship there in those conditions on the high seas had this bill been law, because had the owner of that vessel known that in the event of catastrophe he faced a very high order of liability, I suspect he would not have had that captain and he would not have had that crew on that ship. He would probably have had a functional gyroscope, and he would have had the right charts in the wheelhouse.

Mr. Chairman, those are the types of precautions one takes when one knows that he faces substantial liability. So it seems to me that this legislation is not only critical but long overdue, and I commend the gentleman from New York (Mr. Biaggi) for the leadership he has shown.

Mr. Chairman, I rise in strong support of H.R. 85, a bill which I consider to be a landmark in environmental legislation and one which would provide us with some significant new protections against the dangers of an oilspill.

This bill, on which those of us on the Merchant Marine and Fisheries Committee have worked for the past 6 years—and which the Members of this body have enacted twice before—is designed to place the financial responsibility for oilspill incidents where it belongs—on the spiller. By establishing high standards of oil pollution liability, H.R. 85 would create a strong incentive for those transporting, producing, or storing oil to do so in the safest manner possible **[Sec. 107]**.

It would also provide those suffering economic damage as a result of an oilspill with a prompt and equitable means of obtaining compensation—a matter of particular importance to commerical fishermen and to persons employed in those tourist-related industries which are most vulnerable to the threat of massive economic damage from an oilspill. Past experience has demonstrated the need to improve the procedures by which these people can be compensated **[Sec. 112]**.

Most oilspill damage cases in the past have been settled out of court, apparently due to the reluctance of damaged parties to take on the major oil companies in court. They have instead elected to settle for partial payments of their claims, at a loss of many thousands of dollars.

H.R. 85 would provide oilspill damage claimants an alternative. While preserving the former options, a damaged party could also seek to recover his claim from a specifically created Government fund financed by a small fee on imported and offshore oil. If the claimant's request were judged valid and his claim was paid, the fund would then move against the spiller to recover an equal amount.

At present, international, Federal, and State oilspill liability laws constitute a maze of duplicative and contradictory statutes. However, since H.R. 85 would apply to all the potential sources of oilspills into navigable waters, its enactment would enable us to reduce the scope of an already small oilspill fund set up under the Federal Water Pollution Control Act, allow us to completely eliminate separate similar funds authorized by the Deepwater Port and Trans-Alaska Pipeline Acts, and eliminate the need for a fund to handle spills from offshore oil drilling activities under the Outer Continental Shelf Lands Act amendments, **[Sec. 304]**.

It would, quite clearly, streamline the bureaucracy which has mushroomed as a result of these less coordinated and often overlapping attempts to deal with oil pollution.

The need for a strong oilspill liability bill is very clear—particularly to those of us from the coastal regions of this country whose memories of incidents like the *Argo Merchant* oilspill off New England 4 years ago are still quite vivid. As you know, Mr. Speaker, we in the House have gone on record on two previous occasions in support of legislation very similar to the one we are now considering. Unfortunately, because of stubborn opposition on the part of some—but by no means all—of the oil industry, and because of jurisdictional difficulties among the congressional committees involved—particularly those on the other side of the Hill—the last two Congresses have failed to enact this measure into law.

Our failure to do so despite the stern warnings provided by incidents like the *Argo Merchant* is inexcusable and has constituted one of the most frustrating experiences of my career.

As a result, we have had to bear the responsibility for continuing the current legal framework for oilspill liability, a framework full of conflicts and loopholes large enough to steer a Liberian tanker through; for allowing second-rate oil carrying vessels to continue to escape full legal responsibility for the damages they cause; for forcing communities and individual citizens injured by oil pollution to resort to difficult, expensive court fights against some of the largest corporations in the world; and for failing to provide damaged parties, particularly fishermen and those dependent on the tourist industry—like the residents of Brittany following the wreck of the *Amoco Cadiz*—with any fair and prompt legal recourse.

Let us correct this situation, Mr. Speaker, and protect the American people against the threat of devastating oilspills. I urge my colleagues to cast their vote in support of H.R. 85.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. Studds).

Mr. Chairman, I would like to take this opportunity to acknowledge the contribution of all the members of the Subcommittee on the Coast Guard who labored long and hard over the years to bring this product to us for consideration on the House floor.

I might also add that this has been a total bipartisan effort. At no time were there any partisan considerations. The objective was sighted, and we pursued it.

I cannot thank the members of that subcommittee sufficiently for their patience and for their generous contributions. I give special thanks to the gentleman from Massachusetts (Mr. Studds), the gentleman from Kentucky (Mr. Snyder), the gentleman from Louisiana (Mr. Breaux), and the gentleman from California (Mr. McCloskey), along with a host of other Members, as the record will reveal.

The important point I wish to make is that this has been and is a total bipartisan effort, and I regret some of the comments that were made early on this evening

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Chair now recognizes the gentleman from Kentucky (Mr. Snyder).

Mr. SNYDER. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. Clausen).

(Mr. Clausen asked and was given permission to revise and extend his remarks.)

Mr. CLAUSEN. Mr. Chairman, I am pleased to rise in strong support of H.R. 85, the Comprehensive Oil and Hazardous Substances

Pollution Liability and Compensation act. This legislation—which many refer to as one of the "superfund" bills—is part of what I believe history will consider the most significant environmental legislation developed by this 96th Congress, and, possibly, by any recent Congress.

As many of you know, the road has been a tortuous one. In the past 18 months, four House committees—Merchant Marine and Fisheries, Public Works and Transportation, Ways and Means, and Rules—have considered this bill and debated its thorny issues. A fifth committee—Interstate and Foreign Commerce—has also dealt with many of the same issues in H.R. 7020, the superfund bill which follows this one and which deals with dumpsites discharging hazardous substances, except into navigable waters. There have been differences, both within and among all five committees, concerning the best way to address these issues. All of the committees have prevailed on some matters and given way on others.

But most importantly, Mr. Chairman, I believe that all five committees are to be congratulated on the thorough and cooperative actions all have taken thus far to bring this legislation before us today. In our Public Works Committee, Chairman Bizz Johnson and our ranking member, Bill Harsha, as well as Chairman Ray Roberts of the Subcommittee on Water Resources, have once again provided the kind of encouragement and superb leadership that is essential with respect to major legislation such as this.

Special recognition should also go to the gentleman from Kentucky (Mr. Snyder) and the gentleman from Louisiana (Mr. Breaux), both of whom serve on Public Works and Merchant Marine Committees which have been working on this legislation for three consecutive Congresses and both of whom were especially instrumental in shaping this legislation and shepherding its way to the floor.

Mr. Chairman, we have come a long way since the first session of the 94th Congress when the then-President Gerald R. Ford requested submission of H.R. 9242, the Comprehensive Oil Pollution Liability and Compensation Act of 1975. Numerous days of hearings, debate, and markup have been held. In the 95th Congress, H.R. 6803—a successor bill to H.R. 9242 and a predecessor to the legislation before us today—was passed by the House on two separate occasions, the first, a recorded vote of 332 to 59.

On that occasion, almost exactly 3 years ago, I stood before you and urged enactment of what then was a bill dealing only with oil pollution. I stated that this bill "has the effect of replacing or coordinating a number of existing State laws, increasing overall the individual liability of parties responsible for oil spills, broadening the legal grounds for claiming damage, and extending the principle that oil-handling companies which create the danger of spills bear the responsbility for (resultant) damages."

The same statement still applies to H.R. 85, but the bill now also covers what many believe is a far more insidious problem—discharges into our Nation's water supplies of hazardous substances.

We bring the bill to the House floor in its present form—with hazardous substance incidents included—after long and thorough deliberation on this issue. In the 95th Congress, disagreement over inclusion of hazardous substances was one of the two key problems which could not be resolved between the House and Senate, causing the demise of that session's superfund legislation. The House position was that hazardous substances should not be included in the legislation and, at the same time, I believe that was the most reasonable and responsible position to take. Final regulations covering hazardous substances under section 311 of the Federal Water Pollution Control Act were not published until May 1978 and most of those were made nonimplementable by an industry lawsuit. No mandatory spill reporting requirements for hazardous substances were in effect. Very little data existed to justify including hazardous substances discharges in the bill's coverage.

However, since that time, there have been a number of occurences that have persuaded the committees which have reported H.R. 85 to include hazardous substances.

The problem of Love Canal, of course, is well known to all of you, and I do not have to go into the details of how unfortunate that situation is. There is one aspect about it, however, that is positive. Publicity surrounding that incident has increasingly made us aware that Love Canal is not only a problem in its own right but it foreshadows other major problems to come. Whether there are as many as 2,000 potential "Love Canals," as a study commissioned by the Environmental Protection Agency concluded last year, or closer to 400, as the Chemcial Manufacturers Association has stated, the real problem is a most serious one that cannot be permitted to go unaddressed any longer.

A second significant development was the publication in final form a little more than a year ago of section 311's hazardous substances reporting regulations. Prior to this, there were no mandatory regulations under the Clean Water Act requirements that discharges of hazardous substances be reported. Data on hazardous discharges were available only because some had been reported voluntarily, either to the Department of Transportation or to EPA. Now, however, we have almost a year's worth of data generated under mandatory reporting regulations and, as a result, we have a much better picture of how serious the problem of hazardous substance discharges is.

A third major factor arose out of the first round of hearings on H.R. 85 that our Subcommittee on Water Resources held last September. In those hearings EPA testified that their analysis of voluntary reported data indicated that there are about 3,500 significant chemical spills annually, about half of which reach navigable waters.

The Chemical Manufacturers Association, on the other hand, testified that CMA's examination of EPA's records showed that during calendar year 1978 only 60 hazardous chemical spills were reported to EPA. After the hearing, presumably at least partly because of the differences in testimony, EPA, using contract personnel, conducted a survey of all hazardous material incidents reported voluntarily to EPA during fiscal years 1978 and 1979. In addition, EPA subsequently again surveyed its regional offices and developed comparable data for the first 6 months of fiscal year 1980. The results of the two surveys appear to conclusively refute CMA's earlier statement about EPA's lack of data.

During the 2½ years from October 1978 to April 1980, 4,257 discharges of substances other than oil were reported to EPA. Of those, 2,225 are believed to involve substances now designated as hazardous under section 311. In 1978, 554 spills of designated hazardous substances were reported; in 1979, the figure was 855; and for the first 6 months of 1980, it was 811, which would indicate a full-year total of 1,622. As you can see, analysis of the data on an annual basis demonstrates a strong upward trend.

To further indicate the seriousness of the societal problem posed by discharges of hazardous substances, Administrator Doug Costle called our attention to the fact that a similar pattern had been noted in the past with respect to oilspills. Following promulgation of the reporting requirements for oilspills in 1970, by 1973 there had been more than a threefold increase in the number of spills reported. If a similar increase occurs for hazardous substances, as many as 5,000 to 6,000 reports of hazardous substance spills can be expected annually by 1983.

Mr. Chairman, I would like to insert in the record at this point a copy of a letter I received from Swep Davis, EPA's Associate Assistant Administrator for the Office of Water and Waste Management.

U.S. Environmental Protection Agency,
Washington, D.C.

Hon. Don H. Clausen,
House of Representatives,
Washington, D.C.

Dear Mr. Clausen: In response to the requests you made during and subsequent to EPA Administrator Douglas M. Costle's April 17 testimony before the Water Resources Subcommittee, we would like to provide for the record additional materials relating to hazardous substance spills.

The point we wish to make, using the Hazardous Materials Incidents Report and other documentation, is that spills of hazardous substances occur with alarming frequency and consequences. While one may quarrel with the exact numbers, and the specific characterizations of the spill reports collected by our Regions, the fact that releases or threats of releases of hazardous substances into navigable waters do occur in substantial numbers, risking human health and the environment, is adequate justification for expanding H.R. 85 at this time to include hazardous substance spills into navigable waters.

To put the Report itself into proper perspective, it is essential to realize that the spills and threats of spills it documents occurred before the mandatory reporting requirement went into effect in September 1979. These spills were reported to us voluntarily. Thus, the Report does not have the kind of hard, standardized data which will be forthcoming now that the reporting system is in effect.

However, even if, as the Chemical Manufacturers Association asserts, only 29 percent of these spills were "potentially serious" (948 of the 3,076 spills reported), this number is cause for concern and prompt action by Congress. This is particularly so because 1) the spills voluntarily reported to EPA are by no means all those which occurred during the 2-year period covered by the Report; 2) based on experience with oil, we expect reporting of hazardous substances to increase threefold during the 1980–1983 period; and 3) only 1 percent of oilspills are classified by the Coast Guard as "major" (over 10,000 gallons in inland waters, over 100,000 gallons in coastal waters) as contrasted to the 29 percent under CMA's own analysis for hazardous substances.

Examples of the kind of incident we consider serious, and for which expanded funding is necessary, include Love Canel, Valley of the Drums, Pittston, and Hagerstown, which have been described to you in our various statements.

Additionally, we received 811 reports between October 1979 and April 1, 1980. During this period the Section 311(k) fund was used in 20 cases; EPA went on scene to observe or supervise response in approximately 121 additional situations involving designated substances, which the Agency also considers serious. This does not include those cases where the Coast Guard responded.

Attached are further materials documenting actions EPA has taken under Sec. 311, and other cases we would classify as "serious." We are in the process of polling the Regions now to further document recent 311 actions, and will provide this information as it becomes available.

We believe therefore that Congress is justified in expanding available resources to provide for emergency response, clean-up and third party compensation for such releases. The 311(k) fund which is activated only where the responsible party is unwilling or unable to take appropriate action, will be exhausted within a matter of weeks. The depletion of this fund is clear indication that the need for an adequate and assured funding source is here now, and that there is not adequate response and cleanup by responsible parties.

We respectfully request the Committee to focus your attention on the major incidents as justification for expanding upon the ongoing Sec. 311 program for hazardous substances, as you would for oil spills under H.R. 85.

Sincerely,

SWEP T. DAVIS,
Associate Assistant Administrator,
Office of Water and Waste Management.

A fourth factor is related to the third. In addition to the Environmental Protection Agency, the Coast Guard also receives reports of hazardous substances spills into navigable waters. We have been told that, in the past, very little of the discharge data reported to EPA has also been reported to the Coast Guard, and vice versa.

Thus, if this is true—and we have seen nothing to indicate that it is not—most of the spills of hazardous substances that are reflected in Coast Guard data should be added to EPA's data in order to get a more complete picture of the extent of the hazardous spill problem.

Two years ago, there was not as much Coast Guard data available as there is today on hazardous spills. Today we know that there were 347 actual or potential spills of section 311 hazardous substances reported to the Coast Guard in 1977 and 308 in 1978. The total volume of materials involved in those reports was more than 12½ million gallons of liquid substances and more than 3 million pounds of dry bulk designated hazardous substances. When this data was combined with EPA's discharge data, it became even more evident that H.R. 85 should address hazardous substances incidents and not just be limited to oilspills.

Mr. Chairman, I could go on. I could discuss the "Report of the Interagency Task Force on Compensation and Liability for Releases of Hazardous Substances," which was published in June of 1979 under the auspices of the Department of Justice.

We could review the conclusions of the report, "Compensation for Victims of Water Pollution," which was prepared last year for the Committee on Public Works and Transportation by the Congressional Research Service.

We could go into the details surrounding incidents like the Maria Costa pesticide incident in Norfolk; the derailment near Point Pleasant, W. Va., of a train carrying epichlorohydrin; the chlorine gas incident near Youngstown, Fla., that killed 8 people, seriously injured 45 and hospitalized 200; the Chem Control explosion and fire along the banks of the Elizabeth River in Elizabeth, N.J.; the Pollution Abatement Services incident in Oswego, N.Y., requiring the expenditure of $2 million in State and Federal funds so far; 23 other uncontrolled waste site incidents costing the Federal Government more than $5 million in section 311 moneys as of August 26 of this year; the 12 Clean Water Act lawsuits filed in the Federal

District Courts as part of the administration's Hazardous Waste Enforcement Task Force efforts; and, just a few weeks ago, the pentachlorophenol (PCP) spill near New Orleans.

The list of other incidents, and other reports, and other studies—all of which have occurred in the past 2 years—could probably consume what little time remains to debate this bill. Suffice it to say that, when we in the Public Works Committee decided to add hazardous substances to H.R. 85, we did it after a great deal of thought and consideration of the facts as we knew them. We acted in the face of substantial chemical industry pressure not to add hazardous substances.

And I am convinced, Mr. Chairman, that we acted wisely and well when we took the action we did. I also predict that before too long the more moderate and reasonable voices in industry, that up until now have been kept in the background, will succeed in convincing their more strident brethren that this legislation is ultimately in their own best interests as well as in the best interests of the general public.

I would like to go on to discuss some of the specifics of H.R. 85's provisions, what it hopes to accomplish, and how; but I know others have spoken on these matters and still others plan to discuss them further, so I will defer to them in the interests of time. Let me just conclude with one thought that, perhaps more than any other, expresses why enactment of H.R. 85 is so important and should be supported.

Mr. Chairman, one of my favorite quotations is—"We do not inherit the Earth from our fathers, we borrow it from our children."

When we are trying to make the tough choices that face us on this and other legislation, I believe we would all do well to keep this thought in mind. And with that, Mr. Chairman, I am proud to be able to urge all of our colleagues here today to join me in passing this major environmental legislation.

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Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

Mr. Chairman, I would like to take this opportunity to acknowledge the cooperation we have received from the subcommittee chairman of the Public Works Committee, the gentleman from Texas (Mr. Roberts). He has exemplified the best of legislative characteristics. He knew the problems. He was most cooperative and dealt practically with the problems, did not engage in any esoteric unertakings. He knew exactly what the objective was and recognized all of the obstacles and met them head on.

The cooperation we have received between the Public Works Subcommittee and our committee has been just a wonderful relationship. Even in this closing congressional session, where the Ways and Means Committee came into the picture, I believe, after considerable debate and tugging and pulling, they recognized what had to be done, and the chairman, the gentleman from Oregon (Mr. Ullman), is to be commended and we are thankful for the contribution of their staffs and the members involved.

Mr. Clausen. I thoroughly concure in the gentleman's statement, and I thank him for his addition.

Mr. Snyder. Mr. Chairman, I yield myself such time as I may consume.

(Mr. Snyder asked and was given permission to revise and extend his remarks.)

Mr. Livingston. Mr. Chairman, will the gentleman yield?

Mr. Snyder. I yield to the gentleman from Louisiana.

(Mr. Livingston asked and was given permission to revise and extend his remarks.)

Mr. Livingston. Mr. Chairman, I rise in strong support of H.R. 85, the superfund bill which addresses the problem of actual or threatened discharges of oil and designated hazardous substances.

At the outset, I would like to join in the remarks of previous speakers who acknowledged the outstanding leadership that has been demonstrated in connection with this legislation by the senior members of the Merchant Marine, Public Works, and Ways and Means Committees. From my perspective, this sense of direction and willingness to tackle really tough issues in the face of great pressure to act otherwise has been especially evident in the Public Works Committee.

Without the leadership of the chairman of the committee (Mr. Johnson) and its ranking member (Mr. Harsha), the chairman of the Water Resources Subcommittee (Mr. Roberts) and its ranking member (Mr. Clausen), and the fine bipartisan efforts of my colleague from Louisiana (Mr. Breaux), and the gentleman from Kentucky (Mr. Snyder), this legislation would probably not be before us today. A great deal of recognition and thanks belong to these outstanding public servants, and I would just like to add my voice to the others that have been raised this morning in appreciation of their efforts.

Mr. Chairman, a number of thoughts have been offered thus far in explanation of H.R. 85 and, as one who has dealt with this legislation for two consecutive Congresses and who has participated in numerous days of related hearings and markup sessions, I would just like to add a few more remarks. I will try to focus on why the members of the committees which have dealt with this legislation believe it is so important and also on a brief discussion of some of the bill's more significant provisions.

The problem of oil spills is well known to this body, and I will not dwell on it. Suffice it to say that, during the past 5 years, there has been an average of about 11,000 oil spills per year from all sources in the United States, with an average of 17 million gallons being spilled per year. And, in many respects, the problem seems to be getting worse, not better. More oil was spilled in 1978 from tankers, for instance, than had ever been the case in prior years. It took only 7 months in 1979 for that record to be exceeded, according to the Tanker Advisory Center in New York. The Superfund legislation before us today in H.R. 85 will provide a much-needed mechanism to allocate the risks of damages resulting from most of these kinds of spills between potential spillers and others who benefit from the transportation and handling of this oil.

With respect to hazardous substances, our ranking minority member of the Water Resources Subcommittee (Mr. Clausen), who has been so instrumental in advancing this legislation, has already discussed a number of factors that persuaded committee members to include hazardous substances discharges in H.R. 85's coverage. Let me just expand on his remarks a little.

The use of chemicals in the 20th century has become so widespread that it can be said that their presence is ubiquitous. For all the advantages that chemicals have given society—and these advantages have been overwhelming—there have also been disadvantages which have proven striking. In fact, we are only recently beginning to realize how extensive these disadvantages are and how much industrialized societies like ours need to develop remedial measures to respond to the more serious problems chemicals pose to the environment and public health.

Mr. Chairman, I must point out that I speak with as much experience in this area as anyone in this House; since on July 22 of this year, my district suffered one of the most potentially dangerous chemical spills in history.

I will elaborate on the details of this bill later on, for I have offered an amendment to this bill, which will call for a detailed discussion of this matter at the proper time.

Suffice it to say that through no fault of their own, hundreds of fishermen, as well as wholesalers and retailers in the fishing industry, and many people in the Louisiana maritime industry were adversely impacted when this spill occurred. Under existing law, they have virtually no viable recourse, but had this very same bill, which passed the Public Works Committee in May, been signed into law at that time of the spill, they would have had some redress for their injuries.

Ours is not the only Nation faced with this enormous task. Unintended adverse impacts associated with the use of chemicals and hazardous substances are faced by virtually every industrialized nation in the world. As these nations move to implement their respective national programs, I believe they should attempt to address the same two major goals that we on the Public Works Committee attempted to incorporate in adding title III to H.R. 85: First, protection of public health and the environment; and second, recognition that economic impacts associated with hazardous substances legislation should not unduly impede or create unnecessary economic barriers to technological innovation and substitution of hazardous substances with materials that are less ecologically threatening.

Since the Public Works Committee added hazardous substances discharges to the bill in May of this year, a number of encouraging and, I believe, ratifying developments have taken place.

In June the National Advisory Committee on Oceans and Atmosphere, in its ninth annual report, strongly urged Congress to enact H.R. 85, as reported by the Public Works and Transportation Committee, with both oil and hazardous substances regimes included.

Also in June, a Harris Survey poll indicated that Americans clearly want remedial action taken with respect to 'toxic contamination. The poll concluded, among other things, that an 86 to 11 percent majority nationwide favors "giving this problem of toxic chemical dumps and spills a very high priority for Federal action." More recently, the National Governors' Association, August 5, approved a new policy endorsing enactment of legislation to provide broad coverage for responding to hazardous substances spills as well as releases from abandoned hazardous waste disposal sites.

Mr. Chairman, as each day passes, more and more people are coming to appreciate the wisdom of Public Works' action in adding hazardous substances spills to H.R. 85, and I am proud to have been a part of that process.

Let me now briefly address some of the more significant provisions of the bill. As has already been described, H.R. 85 establishes two funds for cleaning up and compensating certain victims of discharges of oil and designated hazardous substances. The funds will be financed through excise taxes of 1.3 cents per barrel on crude oil and petroleum products received at U.S. ports or refineries, in the case of the oil fund, and of $1.18 per ton on petrochemical feedstocks and 31 cents per ton on various inorganic chemicals, in the case of the hazardous substances fund **[Sec. 211]**.

The fundamental purposes underlying creation of both funds are twofold: to insure that sufficient financial resources are available for the Government to be able to move immediately to contain and clean up oil or designated hazardous substance discharges and, second, to provide greater assurance that those suffering defined economic damages resulting from such discharges will be adequately compensated for those damages.

With respect to the first purpose, I would like to focus just for a minute on the concept of immediate response. There is no question that this bill anticipates and, in fact, attempts to encourage, those responsible for actual or threatened discharges of oil and hazardous substances to act in the first instance to immediately clean up those discharges **[Secs. 104(a)(1) and 111]**.

At the same time it is also intended that the Federal Government, most probably in the person of the Environmental Protection Agency and the Coast Guard, have immediate access to both funds' resources to respond where necessary without delay to incidents covered by the bill. Thus, section 102(b) of the Breaux substitute provides that—

> In addition to the processing and settlement of claims under section 107, the (oil) fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident.

The same result is intended with respect to hazardous substances incidents under title III and is accomplished through language already in effect in section 311(c)(1) of the Federal Water Pollution Control Act and which is consciously left unchanged by H.R. 85.

That language provides that—

> Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge . . . the President is authorized to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

While it could be argued that because title I's section 102(b) language specifically speaks in terms of immediate fund availability and title III contains no such language, and because both oil and hazardous substances are covered under FWPCA's section 311(c)(1) unchanged language, the words "at any time" are somehow meant to exclude immediate response authority with respect to hazardous substances incidents. Such an argument would clearly be erroneous as it is and always has been the intention that both funds are to be immediately accessible to Federal response efforts where such immediate response efforts are deemed to be in the public interest.

Mr. Chairman, I would also like to briefly explain the preemption provisions of the bill **[Secs. 114 and 302(d)]**. As others have mentioned before me, H.R. 85 preempts in both titles I and III State laws and funds that are duplicative of what is provided under H.R. 85. Both sections 110 and 302 of H.R. 85 contain the following identical preemption language:

> Except as provided in this title—no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss . . ., a claim for which may be asserted under this title . . .

The basic tenet underlying these provisions is that duplicative and conflicting statutory schemes are inefficient and burdensome and that transporters, especially, may be particularly disadvantaged by a proliferating variety of State and Federal requirements. Thus, we have provided that damages for the types of losses defined as compensable damages in the bill are the only types of damages for which claims can be asserted under this bill. Recoveries for such damages can only be recovered, either from H.R. 85's fund or in Federal court, under this bill. This is not to say that all other possibly related State laws are being preempted. Such is not the case. Damages for other types of losses may be sought through means outside this bill, including through State courts.

For instance, if a State wishes to continue or create a cause of action, either statutorily or pursuant to common law, providing damages for personal injuries resulting from oil or hazardous substances pollution, it would be free to do so. If a State wishes to do the same with respect to the three categories of claims that were in the bill as reported by the Public Works Committee but are not in the Breaux substitute before us now, it would be free to do so.

With respect to hazardous substances, if a State wishes to continue or create a cause of action for damages caused by hazardous substances other than those designated as such pursuant to the Federal Water Pollution Control Act, it would not be precluded from doing so by this bill, even where the damages compensable under the State law were the same four categories of damages included in H.R. 85.

If a State wishes to create or continue a cause of action for discharges of any oil or any hazardous substance, even designated hazardous substances, which discharge is unconnected to navigable waters, it again is not prevented from doing so by the language of H.R. 85's preemption provisions.

Concerning the creation of State funds, Mr. Chairman, H.R. 85 takes a similar approach. Both section 110, with respect to oil, and section 302, with respect to designated hazardous substances, provide that "no person may be required to contribute to any fund, the purpose of which is to compensate for a loss, which is compensable under title V * * * to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss."

Under both titles I and III, then, the purpose of each of the funds established by H.R. 85 is to compensate those who incur one or more of the bill's defined compensable damages and who have not otherwise been fully compensated. No one may be required to contribute to any other fund which has that same purpose and such duplicative funds are preempted by the above quoted language of sections 110 and 302.

However, other funds are not preempted and this bill does not preclude States from requiring persons to contribute to such funds. If for example a State desires to establish a fund to cover any or all of the causes of action or damages which I just described are not preempted by H.R. 85 and if that State desires to require certain persons to contribute to that fund's financing nothing in this bill—in its "Breaux substitute" form—prevents a State from so acting. This bill does not totally preempt the field; it only preempts State and local enactment which would duplicate the purpose of the funds established in H.R. 85.

Mr. Chairman, there is only one other item that I would like to call to the attention of our colleagues here on the House floor **[Sec. 107(b)]**. The State of Florida requires a water quality certificate to be obtained before maintenance dredging could be performed on inland waterways. Earlier this year, the Corps of Engineers applied for a water quality certificate to maintain water dredging in the gulf waterways. The State review extended beyond the period in which the corps could perform dredging to maintain standard project depths. Realizing this problem, the corps issued a navigation notice on February 8, warning that four locations on the GIWW, Gulf Intercoastal Waterway, were below standard project depths and that same day, February 8, the grounding and subsequent oilspill occurred at one of the shallow points.

I have a concern that accidents like that which occurred in Florida will occur continually if Government does not feel constrained to approve actions within a reasonable time that insures safe inland waterways.

Under H.R. 85, an owner or operator, unless he is guilty of gross negligence or willful misconduct on safety regulations, is not liable for damages caused by a spill to the extent that discharge or spill is caused by the actions of a third party.

In this instance, such as took place earlier in Florida, the discharge might not be deemed the fault of the individual carrier and the State of Florida could be found to be at blame and, to that extent, the discharger would not be held liable.

Mr. Chairman, I have consumed more than my share of time. Allow me, if you will, to close by quoting some language contained in the recently released work, "The Global 2000 Report to the President," which speaks to the issue of toxic pollution of the world's water supplies.

> Global society is currently in a reactionary mode in its dealings with the marine environment: Problems develop, and society reacts—after a time. Considering the magnitude of the short- and long-term problems to be faced, a determined shift to a more anticipatory mode is now appropriate. Although dead or dying global oceans will not be in evidence by the year 2000, what happens over the next two decades will be a major determinant of the health and productivity of the marine environment in the 21st century.

I cannot think of a better reason why we should act today to pass H.R. 85 than the need to get out of this "reactionary mode" and I am proud to urge all of my colleagues here today to join me in supporting H.R. 85.

Mr. SNYDER. Mr. Chairman, I came down to the well for my remarks. I hope the gentleman from Tennessee is still here. I wanted him to see the partisanship that exists in this. It just does not. There was no justification whatsoever for the unjustified tirade that he unleashed. It is the first evidence of partisanship that has been shown about this legislation by the Merchant Marine and Fisheries Committee or the Public Works Committee or the Ways and Means Committee, by either side, one way or the other.

I want to thank the gentleman from New York (Mr. Biaggi) for making that so very eminently clear, and I hope the gentleman from Tennessee is around here or watching the monitor, because he needs to be straightened out on this. That is the first evidence of partisanship that has been shown about this bill.

Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. This bill represents over 6 years of effort to address an increasingly serious and complex environmental problem. The dependence of our society on imported oil and the remarkable advances in the quality of life attributable to the chemical revolution have created problems which necessitate a new approach to cleaning up of oil and hazardous substances pollution of our Nation's waters and assuring that the victims of these events are compensated. H.R. 85 embodies this needed change.

Mr. Chairman, I have the honor to represent today the minority members of both the Committees on Public Works and Transportation and Merchant Marine and Fisheries. These two committees have joint jurisdiction over titles I and II, which deal with oil pollution legislation, and Public Works has exclusive jurisdiction over title III which address hazardous substances issues and also added title IV, congressional review of agency regulations to the bill. Title V, which establishes trust funds for the oil and hazardous substances programs established by titles I and II, is the exclusive jurisdiction of the Committee on Ways and Means. My statement on titles I and II addresses the intent of both committees, from the perspective of the minority.

The fact that these committees have been able to reach agreement on this important legislative initiative, as incorporated in the Breaux substitute, indicates the bipartisan nature of this legislation. I would like to compliment the leadership of these committees for their ability to bring this bill to the floor without any jurisdictional conflict.

Mr. Chairman, if H.R. 85, as amended by the Breaux substitute, is passed today this will be the second Congress in which the House has approved a comprehensive approach to oil pollution liability and compensation. In the 95th Congress we passed a similar bill, H.R. 6803, but final enactment was not possible. Since that time we have been apprised of a growing and serious problem. Virtually every evening we see chronicled by the media some hazardous pollution issue in such areas as Love Canal, N.Y.; Valley of the

Drums, Ky.; Pittston, Pennsylvania; et cetera. The bill before you today will help address these issues.

H.R. 85 was reported from the Committee on Merchant Marine and Fisheries on May 15, 1979, as an oil only superfund. Following that action, the administration forwarded to Congress in June 1979 a proposal to establish a $1.6-billion program for cleanup and compensation for pollution events resulting from spills of oil or hazardous substances, and threats posed by chemical dump sites. Members of the Committee on Public Works and Transportation visited the Love Canal, N.Y., dump site and conducted hearings in Washington last fall and this spring and field hearings in Alma, Mich. As a result, the bill has been amended by the Committee on Public Works and Transportation to add a comprehensive hazardous substance pollution liability and compensation program and two funds, now financed by taxes as the result of Ways and Means Committee action on oil (1.3 cents per barrel) and specified petrochemical feedstocks ($1.18 per ton) and specified inorganic substances ($.31 a ton) to implement the legislation. The Committees on Interstate and Foreign Commerce and Ways and Means developed legislation to address other hazardous waste containment problems and that legislation will be before the House immediately following consideration of H.R. 85.

H.R. 85 represents a reasoned approach to the problems of oil and chemical pollution of our environment. I find it interesting that when I read of opposition to either of these initiatives, that opposition is usually based not upon what is contained in these bills, but rather, what the Senate proposes and the fear that the Senate view will prevail. While I recognize the legitimacy of some of these concerns, I must say to my colleagues that the legislation before them today is reasonable and can be supported in good conscience by all Members and it is my belief that the final product sent to the President will be a legislative initiative which reflects common sense as well as sound environmental protection.

Mr. Chairman, H.R. 85 is a very necessary bill. Existing law—State and Federal—has proven inadequate to handle claims arising from oil spills. Recovery under common law, usually under rules of negligence has proved extremely difficult. Claimants have had to identify a spiller and have the burden of proving that the spiller failed to exercise reasonable care to prevent that spill. Second, under certain circumstances a vessel owner has been able to limit his liability to the value of a vessel and its cargo after the incident. This value may often be little or nothing in a case where a vessel is destroyed and the cargo lost. Numerous initiatives such as the Federal Water Pollution Control Act, the Trans-Alaska Pipeline Authorization Act, Deepwater Port Act, and the Outer Continental Shelf Lands Act attempt to address this problem but are limited in scope and have resulted in a mish-mash with some provisions in conflict with others.

Also, they do not cover all situations necessary to provide for liability and compensation. Comprehensive oil spill liability legislation has been considered a necessity since the 94th Congress. Incidents involving the breakup of the *Argo Merchant,* and the grounding of the *Amoco Cadiz* and the Campeche oil well blowout highlight and underscore the pressing need for this legislation. These incidents demonstrate the potential for extensive damage to real property, personal property, and natural resources. In the 95th Congress we enacted the Port and Tanker Safety Act of 1978, which took steps to prevent oil spills. Now this legislation, H.R. 85, takes an additional step to facilitate cleanup and provide for the damaged party who may have been innocently victimized by oil or hazardous substances pollution.

H.R. 85 consolidates these various provisions into a uniform scheme of liability and compensation and I would like to discuss some of these provisions for the benefit of the Members.

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

The bill makes the owners or operators of the sources of oil discharges strictly liable for cleanup costs and damages [Sec. 107]. However, the bill recognizes that limitation of liability should be provided to owners or operators who are in effect "innocent of any personal faults."

Basically, the amounts to which an owner or operator may limit his liability depends on whether the source is an offshore facility, with a limitation of removal costs plus $50 million; an onshore facility with a limitation of $50 million or such lesser limit as is established by the Secretary of Transportation; a ship, with a limitation of $250,000 or $300 per gross ton—up to a maximum of $30 million—whichever is greater; a vessel which has a limitation of $150 per gross ton; or an inland oil barge which has a limitation of $150 per gross ton, up to a maximum of $150,000.

I would point out that H.R. 85 makes a distinction between a "ship," a "vessel" and an "inland oil barge." Section 101(e) defines the term vessel as follows [Sec. 101(28)]:

> "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; . . .

Similarly, section 101(g) defines the term ship as follows:

> "Ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue: (1) a self propelled vessel, or (2) a non-self propelled vessel other than an inland oil barge; . . .

Section 101(h) defines inland oil barge as follows:

> "Inland oil barge" means a non-self propelled vessel carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters; . . .

These distinctions are intended to recognize that these vessels, ships or inland oil barges pose a different degree of threat of pollution to the navigable waters of the United States.

The bill provides that the owner or operator will incur no liability to the extent that the incident is caused by an act of war or insurrection; a natural phenomenon of an exceptional, inevitable, and irrestible character, which could not have been prevented or avoided by the exercise of due care or foresight; to the extent that the incident is caused by an act or omission of a person other than—the claimant, the owner or operator, an employee or agent of the claimant, the owner, or the operator, or one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator; or the gross negligence or willful misconduct of the claimant.

To insure compensation by the spiller, the bill requires owners or operators to establish and maintain evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which they would be exposed in a case where they would be entitled to claim a limitation of liability **[Sec. 108]**.

Evidence of financial responsibility may be established by evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. In cases where an owner or an operator owns, operates or charters more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

The bill allows compensation for damages arising from a spill **[Sec. 111]**. The damages for which a claim may be presented to the fund include the following:

First: Removal costs which are defined by section 101(bb);

Second: Injury to or destruction of real or personal property which includes expenditure for repair, replacement or restoration of damaged property;

Third: Injury to, or destruction of, natural resources as defined by section 101 (aa);

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

A procedure is established for processing claims **[Sec. 112]**. Basically, the primary response to a claim should be from the owner or operator of the source of the spill. If the spiller fails to provide prompt settlement, the claimant may either proceed against the spiller in court or file his claim with the fund, however, the decision is irrevocable. Where the fund fails to settle the claim promptly, the claimant may submit his dispute to the Secretary of Transportation for adjudication, or, in certain cases may proceed directly in court against the fund.

The bill contains a preemption section to prevent duplicate sources of compensation for damages covered by the bill **[Sec. 114]**. It provides that no action may be brought in a State or local court for damages covered by the bill. Also, no one can be required: First, to contribute to a State fund to pay compensation for losses covered in the bill; or, second, to maintain evidence of financial responsibility relating to the satisfaction of a claim for such losses. The bill does not, however, preclude a State from creating a fund to purchase pollution abatement equipment or hire a professional and support staff, or a fund for the prevention, detection, or observation of oil pollution such as environmental monitoring or research programs. A State may compel payment of a tax or fee to finance such a fund.

Mr. Chairman, at the appropriate time the gentleman from New York (Mr. Biaggi) will offer an amendment on behalf of the committee to address issues which have arisen since H.R. 85 was considered. These provisions clarify that a guarantor's liability is limited to that for which he certifies financial responsibility, as long as he acts in good faith **[Sec. 108(d)]**; the amendment also deletes the reference to the Canal Zone since the implementation of the Panama Canal Treaty vacates the application of this statute to the Canal Zone; and the final provision allows a leasehold owner to indemnify an owner or operator of a facility, such as a drilling rig, which is operating on the leasehold **[Sec. 107(e)]**. The amendment also enables the owner of a leasehold to satisfy the financial responsibility requirements of the act for all facilities on the leasehold by filing one certificate of responsibility for each facility on the leasehold **[Sec. 108]**.

TITLE II—CONFORMING AMENDMENTS

Title II sets forth the effective dates for implementing the provisions of the act, the integration of other Federal statutes dealing with oilspill liability and compensation, and certain conforming amendments. The variety of Federal liability and compensation schemes and procedures which are now in existence in various statutes would be replaced by this legislation, providing for a comprehensive approach to oilspill liability and compensation **[Secs. 302 and 304]**.

At the appropriate time, an amendment will be offered to title II to clarify the procedure for disposing of funds remaining in the fund established by the Trans-Alaska Pipeline Authorization Act to assure that the excess funds will be returned to those which paid into the fund. I support the amendment and urge my colleagues to do likewise.

TITLE III—HAZARDOUS SUBSTANCES POLLUTION LIABILITY AND COMPENSATION

Mr. Chairman, title III of H.R. 85 establishes a comprehensive hazardous substance liability and compensation program under section 311 of the Federal Water Pollution Control Act. This provision was added by the Public Works Committee following extensive hearings. Virtually every witness that came before the Public Works Committee recommended this approach, with the clear exception of the Chemical Manufacturers Association. However, by letter dated September 17, 1980, the Chemical Manufacturers Association indicate they now support this title, subject to approval of the "harmful quantities" amendment to be offered by the Committee on Public Works and Transportation. I and the committee did not accept the proposition that the existing law is adequate to respond to any potential problem that might arise. I think an objective reading of the record and a thorough analysis of the issue indicates that existing law is inadequate. Certain points underscore this sentiment and I would like to review them for the benefit of my colleagues. From the period of October 1, 1979, to April 1, 1980, EPA has been involved in the following actions. (This is the first 6-month period since the regulations went into effect.)

Section 311, Hazardous substances:

Received 811 notifications of discharges,

Directed 20 on-scene responses,

Monitored 121 discharges on-scene where owner/operator assumed responsibility, and

Activated the 311(k) response fund 20 times.

Environmental emergencies other than section 311 using authority of section 104 of the Clean Water Act:

Received 37 notifications of discharges,

Directed nine on-scene responses,

Monitored 305 discharges other than on-scene, and

Used section 104 nine times to fund on-scene responses.

These statistics do not include discharges reported and responded to in coastal areas and U.S. Coast Guard jurisdiction.

The committee reported this amendment on a voice vote with only one objection. Subsequently, the Ways and Means Committee successfully asserted jurisdiction and changed the financial mechanism for the hazardous substance compensation fund [Sec. 211]. I personally feel that the committee adopted an unfortunate mechanism to finance the fund by ignoring the opportunity to impose a tax based upon the threat to the environment posted by a particular substance rather than by adopting the administration's approach of imposing the tax upon certain petrochemical feedstocks because it is alleged to be more administratively feasible.

I believe that a toxicity-based fee approach can be made to work, that it is administratively feasible, and that it is even more equitable than the compromise which I have agreed to. That is not to say that I do not support the Ways and Means amendment because exactly the opposite is the case. I do support it.

But what I would like to say is this: I do not feel that I can ask my colleagues to agree with my personal solution to this important issue just because I feel that the toxicity-based approach may be the best way to go. You deserve—and in fact are entitled to—more than that. We should have hard data supporting the toxicity-based concept before we are willing to commit to it.

This has never been a secret. When I originally offered my toxicity-based amendment in subcommittee, it was with the clear understanding that it was meant to be a first step toward setting up a hazardous fee scheme that was more equitable than a flat fee on feedstock. It was also clearly understood that more supporting data was needed in order to justify maintaining this approach in any legislation.

Unfortunately I cannot develop at this time the data demonstrating that this approach is administratively feasible. But if EPA can administer the Toxic Substances Control Act, which covers more than 43,000 existing chemicals and requires the Agency to screen all known data on the health and environmental effects of approximately 1,000 new chemicals each year; if EPA can propose the Resource Conservation and Recovery Act regulations that take a cradle-to-grave approach to regulating hazardous wastes and, as part of that approach, specifically identify some 416 hazardous substances and 118 extremely hazardous substances—the very same concept that I used in my toxicity-based fee; if EPA can spend some 5 years collecting and evaluating and analyzing the data supporting its section 311 regulations, somehow, I suspect that the Agency is capable of figuring out how to make a toxicity-based approach for 297 substances administratively feasible.

Unfortunately, this position will not prevail and I will not offer an amendment to change the decisions already reached. However, I note that the Senate Committee on Environment and Public Works has adopted a similar concept in that they propose to redirect the assessment of their fee when sufficient data is available to indicate what substances are involved in those incidents for which the fund is called upon to respond. I hope that in conference the concept can be retained so that we will have legislation requiring those posing the problem to pay **[Sec. 301(a)]**.

Mr. Chairman, one issue which I think needs to be addressed is that of the coverage to the 311 program with respect to abandoned or inactive hazardous waste sites. Under current law, and I believe that point needs to be underscored, under current law the Federal Government is responding to events where a discharge or a threat of a discharge of a designated hazardous substance, in quantities that may be harmful, EPA is currently involved in the following locations in cleaning up and mitigating threats caused by hazardous substances:

Ongoing and Completed 311 Actions at Uncontrolled Sites, August 26, 1980

Region, site name and location, and 311(k) expenditures and status[*]:

I

Western Sand & Gravel, Burrillville, R.I., $300,000—Ongoing.
Picillo Site, Coventry, R.I., $10,000—Ongoing.
Motollo Site, Raymond, N.H., $3,000—Ongoing.
Gilson Road Site, Nashua, N.H., $2,000—Ongoing.
Chem Waste, New Brunswick, Maine, $10,000—Completed.

II

Chem Control, Elizabeth, N.J., $700,000—Completed.
Lipari Landfill, Pitman, N.J., $100,000—Ongoing.
Kin-Buc Landfill, Edison, N.J., $135,000—Ongoing.
PAS, Oswego, N.Y., $2,000,000—Ongoing.
Black Creek, Niagara Falls, N.Y., $400,000—Ongoing.

III

Grigco Facility, Sharptown, Md., $630,000—Completed.
National Wood Preservers, Haverford, Pa., $200,000—Ongoing.
Butler Tunnel, Pittston, Pa., $1,800,000—Ongoing.
Dracup Warehouse, Youngsville, Pa., $15,000—Ongoing.

IV

Farm Site, New Rockton, Ala., $5,000—Completed.
Sapp Battery Salvage, Alford, Fla., $18,000—Completed.
Ferguson Site, Rock Hill, S.C., $120,000—Completed.
Spires Property, Wellford, S.C., $60,000—Ongoing.
North Hollywood Site, Memphis, Tenn., $51,000—Completed.

V

Seymour Recycling, Seymour, Ind., $900,000—Ongoing.

VI

Gurley Pit, West Memphis, Ark., $70,000—Ongoing.
French Limited, Barrett, Tex., $70,000—Ongoing.
Motco, Lamarque, Tex., $120,000—Completed.

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[*] Section 311 is used only to provide emergency assistance and containment to halt a discharge or the threat of a discharge into navigable waters of the United States. Any "completed" actions may still require EPA and/or State agency involvement at a site, but 311(k) funds are no longer being utilized at this time.

VII

Farm Site 1, Verona, Mo., $50,000—Completed.

VIII

None.

IX

Stringfellow, Riverside, Calif., $560,000—Ongoing.

X

None.
Total (As of 8/26/80):
311(k) Expenditures at uncontrolled sites—$8,329,000.
Number of 311 Actions at Uncontrolled Sites—25.

The committee currently intends these activities to be continued under the program established by H.R. 85. The reasons are simple. There must be a response to the discharge or threat of discharge of a designated hazardous substance into the navigable waters. Victims of these events must be compensated. H.R. 7020, the Hazardous Waste Containment Act, will clean up 100 to 200 sites and covers releases into air, land, or ground water—but specifically excludes releases into navigable waters. Thus, the only long term response effort for discharges into navigable waters is section 311, as amended by H.R. 85 [Sec. 101 (22)].

Section 311 addresses all discharges, a defined term at section 311(a)(2) which states:

> Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

As you can see, section 311 is intended to include far more than just spills. And note, if you will, the absence in the definition of any requirement for a discharge to be episodic before the definition applies. Exactly the opposite is the case. Discharge means any—and I underscore any—"spilling, leaking, pouring, emitting, emptying or dumping."

Thus, section 311 already includes coverage of dump sites when they discharge impermissibly to a navigable water or ground water threatening navigable waters. I would note that to exclude dump sites from H.R. 85 would be to retard, not advance, existing law and the need to find a solution to the problem of hazardous substances pollution. In fact, it would be a pulling back by the Congress from existing law. Currently, 25 communities, as I already stated, are receiving assistance under the Clean Water Act to mitigate and cleanup the threats to public health and welfare arising from hazardous waste sites. However, the current effort is limited to cleanup and removal costs and this is usually further restricted by EPA to efforts to prevent or mitigate the immediate threat versus pursuit of a long term solution—that has been left to non-Federal interests due to limitations of Federal funds for the program H.R. 85 will remedy this problem, to provide the financial resources to allow a complete cleanup effort. Also, no Federal cause of action for compensation for damages is available under current Federal law—those aggrieved must seek relief from the responsible party under State or common law—and in these cases, there usually is no adequate resolution of the problem and so the victims are uncompensated.

With the changes to section 311 that are proposed in title III of H.R. 85 there will be a comprehensive hazardous substances liability and compensation scheme—just as we will have for oil pollution. I urge my colleagues to approve this important legislation.

Mr. Chairman, when title III is considered, the gentleman from Louisiana (Mr. Breaux) will offer an amendment on behalf of the Merchant Marine and Fisheries and Public Works and Transportation Committees. The first two parts of this amendment will be virtually identical to those of title I. That is, it limits the guarantor's liability to that which he certifies financial responsibility and the deletion of the Canal Zone from coverage under this act. The amendment also adds a new definition to section 311 to define the term "ship" which is not currently a defined term for the purposes of this section. This definition is identical to that contained in title I.

The final part of the amendment, Mr. Chairman, will be a provision to clarify that, in the case where a hazardous substance designated under section 311 is not being discharged in a quantity that may be harmful, EPA will continue to have authority to respond to remove the pollution threat and that funds for the removal cost will come from the fund established by title V. The amendment further clarifies that when a discharge of a designated hazardous substance occurs in a quantity that is less than that which may be harmful, recovery is not permitted under section 311 from a responsible party.

Mr. Chairman, I will support these amendments when offered by the gentleman from Louisiana.

□ 2100

Mr. Chairman, I yield back the balance of my Merchant Marine time.

The Chairman. The Chair recognizes the gentleman from Texas (Mr. Roberts).

(Mr. Roberts asked and was given permission to revise and extend his remarks.)

● Mr. Johnson of California. Mr. Chairman, I rise in support of the bill. I wish to commend the chairman of the Subcommittee on Water Resources, the gentleman from Texas (Mr. Roberts) for the fine job he has done in bringing this bill to the floor. I wish also to cite the usual fine cooperation and distinguished leadership of the ranking minority member of the full committee, the gentleman from Ohio (Mr. Harsha) and the ranking minority member of the Subcommittee on Water Resources, the gentleman from California, (Mr. Don H. Clausen.) I wish also to acknowledge the invaluable support of the gentleman from Louisiana (Mr. Breaux) and the gentleman from Kentucky (Mr. Snyder).

The Breaux substitute, which we are considering today, represents the work of three committees—our Committee on Public Works and Transportation, the Committee on Merchant Marine and Fisheries, and the Committee on Ways and Means. It is the result of years of effort and a fine example of what can be achieved through the dedicated cooperation of three committees of Congress.

H.R. 85 is a landmark bill. It establishes a comprehensive scheme of liability for damages caused by spills of oil and hazardous substances, provides for the cleanup of these spills, and provides a mechanism for recovery by injured parties for damages suffered as a result of spills. This is one of the most important pieces of environmental legislation to be considered by this Congress.

Title I of the bill relates to oil spills and title III relates to spills of hazardous substances. Each title provides that the owner and operator of a vessel or an onshore or offshore facility are jointly, severally, and strictly liable for cleanup costs and specified economic damages which result from a spill **[Sec. 107]**.

Except where the pollution incident is caused primarily by willful misconduct or gross negligence or by a violation of applicable Federal safety or operating standards, limitations on liability are provided. These are detailed in the statement of our chairman of the Water Resources Subcommittee. Owners and operators are also required to establish and maintain financial responsibility. These provisions insure that where claims are involved against the spiller, the spiller will be able to pay.

Individuals who suffer economic damages, as specified in the bill, may file claims to recover such damages **[Sec. 112]**. These claims are first filed against the spiller and then against the trust fund established in title V if the spiller does not settle within 60 days. There are two funds established in title V—one for oil spills and one for spills of hazardous substances **[Sec. 221]**. The proceeds in the funds are derived from excise taxes on oil and on organic and inorganic feedstocks.

Mr. Chairman, this bill represents an innovative and responsible approach to the problems posed by spills of oil and hazardous substances into the navigable waters. It provides for a uniform system of liability and for a means of compensating victims of spills. Moreover, it does not involve expenditures from the general treasury but rather from trust funds derived from taxes on the substances which are involved in the spills. The bill is necessary, and the need for its early passage is urgent.●

Mr. ROBERTS. Mr. Chairman, H.R. 85 is a comprehensive approach to the problems posed by and the damages associated with spills into the Nation's waters of oil and hazardous substances.

This bill represents years of effort on the part of our committee and the Committee on Merchant Marine and Fisheries. In addition, the Committee on Ways and Means has given the legislation its very thorough consideration.

H.R. 85, as originally reported by the Merchant Marine and Fisheries Committee, dealt with oil spills. It established a system of liability for spillers and a mechanism for the recovery of economic losses caused by spills. Our committee added title III, dealing with spills of hazardous substances into the navigable waters. Then the Committee on Ways and Means, to which the bill was sequentially referred, added title V, which imposes excise taxes on oil and petrochemical and inorganic feedstocks and establishes trust funds to pay for the cleanup of spills and compensate victims of spills for economic losses.

This bill is on the floor today because of the efforts of the three committees involved in its consideration. A compromise has been reached which embodies the views and recommendations of these committees. This is represented by the "Breaux substitute" which is, under the rule, to be considered as the original bill.

I wish to commend the members of all three committees for their efforts in enabling this important legislation to come to the floor. Our committee's part in this legislation was assisted by the usual fine leadership of our chairman, the gentleman from California (Mr. Johnson), as well as by the significant support provided by the ranking minority member of the full committee, the gentleman from Ohio (Mr. Harsha) and the ranking minority member of the Subcommittee on Water Resources, the gentleman from California (Mr. Don. H. Clausen) and the gentleman from Kentucky (Mr. Snyder) and the gentleman from Louisiana (Mr. Breaux).

These gentlemen, together with all the members of the three committees and the chairmen and ranking minority members, share the credit for enabling the House to consider one of the most significant pieces of legislation before it in the 96th Congress.

H.R. 85 addresses the very serious problems associated with spills of oil and hazardous substances into our waters, liability for these spills, and compensation of persons who suffer economic damages as a result of the spills.

Title I of the bill, which deals with oil spills, and title III, which deals with spills of hazardous substances, each establish a comprehensive system of liability and compensation. The owner and operator of a vessel or an offshore or onshore facility are jointly, severally, and strictly liable for cleanup costs and specified damages which result from a spill of oil or hazardous substances **[Sec. 107]**.

If the pollution incident is caused primarily by willful misconduct or gross negligence or by a violation of applicable Federal safety construction or operating standards, there is no limitation on liability. In other instances the following limitations on liability apply:

First: A vessel other than a ship or inland oil barge, $150 per gross ton;

Second: For an inland oil barge $150,000 or $150 per gross ton, whichever is greater;

Third: For a ship $250,000 or $300 per gross ton up to a maximum of $30 million, whichever is greater;

Fourth: For a deepwater port, $50 million;

Fifth: For an offshore facility under the authority of the Outer Continental Shelf Lands Act, removal costs plus $50 million;

Sixth: For other facilities such as onshore, $50 million or such lesser amount as established by regulation.

The bill also requires that the owner or operator of a vessel or offshore facility establish and maintain evidence of financial responsibility equal to these limits of financial responsibility **[Sec. 108]**.

H.R. 85 also provides a means whereby claims for damages for economic loss arising from spills may be asserted **[Sec. 111]**. The damages for which claims may be made are:

First: Removal costs;

Second: Injury to, or destruction of, real or personal property;

Third: Injury to, or destruction of natural resources (claim may be asserted by President or by a State);

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period after the loss is first suffered.

Claims are first presented to the owner, operator, or guarantor except where the source of the discharge cannot be designated or the designation is denied **[Sec. 112]**. If the claim is denied or not settled within 60 days, the claimant may present the claim to the fund. Also, where the claim exceeds a limit of liability or the owner, operator, and guarantor are financially incapable of paying the claim in full, a claim for the uncompensated damages may be presented to the fund. If the fund denies liability or does not settle the claim within 60 days, the claimant may submit the dispute to the Secretary of Transportation for decision or may commence an action in court against the fund. Final orders of the Secretary under the disputes procedure are reviewable in the district courts of the United States.

The bill also preempts certain State actions in order to insure that duplicate funds and taxes are not established **[Sec. 114]**.

No action may be brought in any court of the United States, or any State or political subdivision thereof, for damages for which a claim may be asserted under the act. No one may be required to contribute to a fund, the purpose of which is to compensate for damages recoverable under the act; a State may, however, impose a tax or fee in order to finance the purchase and pre-positioning of pollution cleanup and removal equipment.

Title V of the bill, which will be discussed in detail by the Committee on Ways and Means, imposes taxes and establishes the funds which are available to cover cleanup costs and payment of eligible claims.

Mr. Chairman, H.R. 85 addresses the problem of spills of oil and hazardous substances in a manner which is reasonable, fair and responsible. It is a good bill, which has been refined by years of effort and by three committees. It deserves to become law this year, and I urge my fellow Members to support it.

☐ 2110

The CHAIRMAN. The Chair now recognizes the gentleman from New York (Mr. Conable) for 30 minutes.

(Mr. Conable asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Chairman, I support the Ways and Means Committee amendment to H.R. 85. The Ways and Means Committee approved title V, called the "Environmental Revenue Act of 1980."

Title V establishes an excise tax on crude oil and specified chemical feedstocks **[Sec. 211]**. It imposes an excise tax of 1.3 cents per barrel on crude oil which will be deposited into a new "Comprehensive Oil Pollution Liability Trust Fund." The crude oil excise tax is projected to raise $75 million in revenues annually. An excise tax also is imposed on specified petroleum feedstocks and inorganic chemicals which will be deposited into a "Hazardous Substance Pollution Liability Trust Fund **[Sec. 221]**." The excise tax on petroleum feedstocks is projected to raise $50 million in revenue annually and the excise tax on inorganic chemicals will raise $25 million annually. The excise taxes will sunset after September 30, 1985 **[Sec. 211]**.

Both trust funds contain similar terms governing the type of claims which may be paid out of the funds **[Sec. 221(c)]**. The claims eligible to be paid by the funds are: First, the costs for cleanup or removal of spilled substances; second, property damage; third, damage to public natural resources; and fourth, the loss of profits or earning capacity due to property or natural resource damage suffered by a person who derives at least 25 percent of his earnings from the utilization of the damaged property or natural resource. The last category of eligible claims may not compensate for more than 2 years of lost profits.

During the first year of the trust funds' operations they may borrow up to $75 million from the Treasury if it is necessary to carry out the purposes of the legislation **[Sec. 223(c)]**. This will enable the funds to respond to any emergency claims filed before the excise tax deposits have an opportunity to build up.

After the first year the funds may not borrow from the Treasury. Furthermore, a claim against the trust funds does not constitute an entitlement from the United States.

Title V specifies that each fund will maintain a $30 million reserve for cleanup activities **[Sec. 221(c)]**. The payment of economic damage claims will be deferred until the fund deposits exceed the $30 million cleanup reserve. This will assure that funds for the cleanup and removal of spills will not be depleted by the payment of economic damages suffered by persons in earlier spills.

Mr. Chairman, title V provides the revenue foundation on which to build a responsible program to clean up hazardous spills and to provide a source of compensation for a limited category of property and economic damage claims.

Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina (Mr. Martin).

Mr. MARTIN. Mr. Chairman, it is a tribute to a lot of work by so many committees that this bill H.R. 85 has been brought before the House this evening. Although there were many complexities to be resolved, I was pleased that the Committee on Ways and Means cleared its responsibilities with dispatch.

I support H.R. 85 and its objective of cleaning up and dealing with oil and chemical spills. The fund establishes the capability for cleaning up and repairing the damages resulting from oil and chemical spills in the oceans and harbors and navigable waters. It goes beyond that, to compensate innocent victims whose property is damaged or whose livelihood is impaired as a result of such oil or chemical spills. My amendments agreed to in Ways and Means thereby incorporate the administration's view on these questions.

It is intended thereby to reimburse anyone whose property is damaged for the cost of repairing and cleaning that property and restoring it to use. Further, those businesses, like commercial fishing or harvesting of other marine resources, like public accommodations, and like related food processing enterprises, that suffer loss of income and business due to such spills will be compensated for a reasonable period of time, 2 years, until the lost business can be restored or replaced.

Our committee also addressed the need to protect the Federal Government from claims other than as provided by this fund for accidental or negligent spills and damages. Similarly, a time limit for claims is provided in the interest of producing timely reporting by injured parties and to avoid each episode having open-ended expenses **[Sec. 112(d)]**.

It is our hope, Mr. Chairman, that this legislation will create a greater commitment to marine safety both in our harbors and on the high seas for these precious but potentially hazardous cargoes.

Mr. Chairman, I want to express my personal respects to the distinguished gentleman from New York (Mr. Biaggi), for his personal dedication, as well as that of Mr. Snyder and Mr. Breaux, for working fairly with Members of both parties and all committees and all points of view, even when they differed from their own approach, to the end that a bill is before us now of which we can all be proud and confident. The gentlemen were ever respectful of different opinions on aspects of this legislation, and that greatly helped us to expedite action on H.R. 85.

Mr. ASHLEY. Mr. Chairman, the bill before the House, H.R. 85, is complex legislation that has been developed in this Congress through careful and searching consideration by three committees of the House. I believe that a brief history of the bill will be helpful to Members as we enter debate on its merits and consider possible amendments.

The Committee on Merchant Marine and Fisheries reported H.R. 85 on May 15, 1979. As reported by this committee, the bill had two titles: Title I to establish the comprehensive system for oilspills and title II containing effective dates, a savings provision, and conforming amendments.

On May 16, 1980, the Committee on Public Works and Transportation to which H.R. 85 had been jointly referred, reported the bill, making minor amendments to titles I and II and adding two titles. Title III would establish a system for hazardous substance spills similar to that in title I for oil. Title IV would provide for congressional review of regulations promulgated by responsible agencies pursuant to the act.

Thereafter, the Committee on Ways and Means requested and received sequential referral of the bill. That committee amended the bill by adding a new title. Title V restructured the funding mechanisms established by titles I and III and also altered, to some degree, the scope of compensable damages set out by the earlier titles.

Subsequently, after discussions among the three committees involved, a substitute was developed, incorporating title V as adopted by the Ways and Means Committee on August 21 and conforming titles I, II, and III to title V. This amendment, in the form of a substitute, was offered by Mr. Breaux on August 27, and appears in the Record of that date. In accordance with the rule, that substitute is before us today as an original bill. We, therefore, now consider a bill that is an integrated and internally consistent product of the work of three committees.

I will limit the balance of my remarks to titles I and II which together constitute comprehensive liability and compensation legislation for oil pollution.

In brief, titles I and II would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damage in the United States. This legislation imposes strict liability for oil pollution damage and provides strong economic incentives to prevent oil spills **[Sec. 107]**. It requires the spiller of oil to clean up the spill and to compensate anyone suffering an economic loss as a result of the spill. To insure compensation for victims of oil-spills, the bill provides a backup fund supported by a tax on imported and domestically produced oil **[Sec. 211 and 221]**.

This legislation closes a gap in the quest for a comprehensive system for preventing oilspills and for dealing with their consequences. It is consistent with international treaties on the subject and takes account of experience under existing law, notably the Trans-Alaska Pipeline Act, the Outer Continental Shelf Lands Act, and the Deepwater Port Act, each of which establishes oilspill pollution funds.

The Superfund bill for oilspills was initially developed by a task force consisting of representatives from several cognizant Executive branch agencies. It has been thoroughly considered in three Congresses. It has been examined in great detail by representatives of industry, environmental and consumer groups, State governments, and the various interested executive agencies. It represents a consensus that has the general support of almost all those interested in the subject of oilspill cleanup and compensation. Predecessor bills were tested in the legislative process: for example, H.R. 6803, a bill virtually identical to H.R. 85 as reported by this committee, passed the House of Representatives in the 95th Congress. The result of all this extensive preparatory work is sound legislation, the provisions of which are intermeshed and interdependent. The system of compensation and liability for oilspills to be established is comprehensive and internally consistent. Accordingly, I urge that this legislation receive the full support of my colleagues.

I yield now to the distinguished chairman of the Coast Guard and Navigation Subcommittee, Mr. Biaggi, who early in this Congress introduced H.R. 85 and who has worked so diligently and effectively in its behalf.

● Mr. RATCHFORD. Mr. Chairman, I rise in support of the superfund legislation, H.R. 85 and H.R. 7020. These two pieces of legislation have been created in response to the enormous problem of chemical waste and their effect on the health and environment of our Nation.

There is an urgent need for a comprehensive solution to the problem of hazardous waste contamination. The House of Representatives must pass legislation which addresses the problem and provides for adequate contributions from the industries who created these chemical nightmares.

One of the most publicized cases of contamination is in the Love Canal area, near Buffalo, N.Y., where chemical wastes from a buried, abandoned dump seeped into yards and basements. Higher incidences of cancer, birth defects, and other illnesses have been noted in the area.

I am concerned about this, because I too have had incidences of hazardous wastes and contaminated water supplies in my district. In Beacon Falls, Conn., hazardous waste sites have been found and private wells have been shut down. In Prospect, a municipal well was closed due to chemical contamination. Danbury, Derby, Cheshire, and perhaps Wilton, Conn., have all experienced similar problems. The lists continue to grow as more communities discover contamination of their resources and illegal dumping and improperly handled dump sites.

The Environmental Protection Agency estimates that there are between 30,000 and 50,000 hazardous waste sites in the United States. Between 1,200 and 2,000 of them pose serious environmental and health risks. A report released by the Surgeon General described chemical dump sites as one of the most serious threats to public health facing our Nation. Until these sites are examined thoroughly, it is impossible to predict where the next Love Canal will be. It could be anywhere—in my district or in one of my colleagues'.

For this reason, it is essential that we address this problem as quickly as possible. The mechanisms must be in place for dealing with already-found hazardous waste sites, and for cleaning up the sites which have not yet been discovered.

I support H.R. 85—the Oil and Chemical Pollution Liability and Compensation Act—as introduced by Representative John Breaux. I also support H.R. 7020 and the Committee on Ways and Means' amendments which would strengthen the cleanup fund and industry's contributions to it. I urge passage of these pieces of legislation as they represent comprehensive treatments of a serious and growing problem for the health and the security of the people of our Nation.●

● Mr. CORRADA. Mr. Chairman, I rise in strong support of H.R. 85, the Oil and Hazardous Substance Pollution and Liability Compensation Act. This legislation, together with H.R. 7020, the Hazardous Waste Containment Act, represents a major achievement in our efforts to provide solutions to the problem arising from the contamination of our waters and lands by oilspills and hazardous wastes disposal.

In the past few years we have experienced accidents which have focused attention on these problems. It seems as though oilspills have become an accepted risk we must endure because of our dependence on oil for energy. However, to those persons directly affected by the spills that kill fish, pollute the beaches, and generally endanger our health, it is small comfort to be told that, eventually, nature will dissipate the oil and that all will be well again.

This legislation is urgently needed. It provides for complete and speedy compensation to the victims of oil and chemical spills while simplifying the vast number of present liability laws. The bill provides for the creation of two funds, one for oil spills and the other for hazardous substance spills. These two funds will insure that the cost of cleanup and damage compensation will be borne by those who cause the pollution and not by the taxpayer.

I urge all my colleagues to support the amendments that will be offered that will strengthen the provisions of H.R. 85. We need a very forceful and comprehensive legislation on record to be able to provide protection to the unfortunate victims of oil and hazardous substances spills.●

● Mr. YOUNG of Alaska. Mr. Chairman, today we consider H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. I rise in support, in particular, of the amendment to H.R. 85 offered by Mr. Breaux. In addition, I support the committee amendments which are to be offered to make technical and clarifying changes in the Breaux substitute to carry out the intended purpose of the legislation.

This legislation establishes a comprehensive system of liability and compensation for damages caused by oil and hazardous substances pollution. It establishes strict liability, with specific limits, for owners, operators, and leaseholders of sources of discharges and creates a backup compensation fund to respond to damage claims which are not satisfied by the party responsible for the discharge and damage claims where the responsible party cannot be identified. The Breaux substitute amendment is the integration of the various reported versions of H.R. 85 from the Committees on Merchant Marine and Fisheries, Public Works, and Transportation, and Ways and Means. Title I addresses oil pollution liability and compensation. Title II also addresses oil pollution and sets the effective dates for regulation, and makes certain conforming amendments which eliminate the various oil pollution compensation schemes contained in other Federal statutes.

The oilspill liability and compensation provisions of the Trans-Alaska Pipeline Authorization Act, the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act of 1978 are subsumed into H.R. 85. Thus, this title insures a comprehensive and unified approach to oilspill liability and compensation. Title III addresses hazardous substance liability and compensation and title IV provides for a review of regulations issued under the authority of titles I through IV. Title V establishes a trust fund in the Treasury of the United States derived from taxes on petroleum and certain chemicals and sets forth the fiscal mechanics for the operation of the fund.

Mr. Chairman, the need for a uniform law to provide a comprehensive system of liability and compensation for damage caused by pollution is well recognized. The dramatic incidents of the *Torrey Canyon,* Santa Barbara platform blowout, *Argo Merchant,* and *Amoco Cadiz* demonstrates the potential for extensive damage to the property and natural resources, particularly along the coastline of our Nation. We have already taken steps to prevent pollution damage of our coastal and marine environment through the Port and Tanker Safety Act of 1978. This legislation today is the logical complement to the preventative legislation so that cleanup is facilitated, and innocently victimized and damaged parties are compensated.

In the process of the consideration of this bill by the various committees with jurisdiction, the categories for damages for economic loss which may be asserted under this bill have been condensed into four categories. These categories are: First, removal costs; second, loss of property; third loss of natural resources; and fourth, loss of profits or earning capacity in certain justified instances [Sec. 111].

In particular, I am pleased to note that the second item has been retained in the original form as reported by both the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation, including the claimant provision. Through this provision, therefore, those persons who are commercial and subsistence users of fish, wildlife, and other natural resources may be compensated.

Mr. Chairman, I urge adoption of the Breaux substitute of H.R. 85.●

● Mr. CLEVELAND. Mr. Chairman, I support the passage of H.R. 85 for what it is intended to do despite serious reservations as to whether it will in fact do it.

There is no question that there is merit in trying to come up with a unified program of liability, cleanup and compensation for damages in the case of discharges of oil and hazardous substances.

And there is merit in the bill's provisions for cleanup of toxic dump sites where contamination of groundwater poses a threat to surface waters.

But my years as ranking minority member of the Public Works Oversight Subcommittee lead me to question whether the Environmental Protection Agency can do its piece of the job.

Years ago, for example, when EPA had far fewer programs to administer than it does today, it made a hash of the construction grants program under the Clean Water Act. Fortunately, we in the Congress were able to undo some of the damage by making it possible for States to run much more of the program.

Today, on the basis of our subcommittee's recent hearings on the monitoring and control of toxic chemical discharges, we again have found cause for dissatisfaction. And again, I for one, am moved to wonder whether the States should not be given a large role in that program.

I am not alone in my concern, Mr. Chairman.

In our recent toxic hearings, former EPA Deputy Administrator John Quarles testified that, and I quote:

> Regulatory requirements have become excessively complex and are overwhelming the capacity of both the government agencies and private industry to come anywhere near carrying out the totality of their respective obligations.

Focusing on EPA, he cited remaining problems with the Clean Water Act, the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Noise Control Act, the Toxic Substance Control Act, and the Resource Conservation and Recovery Act.

At the same hearings, EPA Administrator Costle said:

> We are getting closer to getting a reasonable handle on the question of toxics through the Clean Water Act than through virtually any other statute that we are dealing with.

Mr. Chairman, as I said, the environmental regulatory program I know best is the Clean Water Act. So when Doug Costle starts talking like that, I really start worrying.

So as I ponder this legislation, I again find myself asking whether there is not a larger role for the States. And to their credit, the water pollution control people in New Hampshire are also wondering the same thing.

Instead, at this point, H.R. 85 contains a preemption provision precluding the operation of State funds based on taxes or fees levied on oil and chemicals, if the revenues are to be used for purposes compensable under this bill [Sec. 114].

I can certainly understand that there is a case for national uniformity in liability and compensation, and a need to avoid imposing on industry the burden of paying into a Federal fund and a proliferating number of State funds to support similar activities.

At the same time, I am concerned lest the funds created by H.R. 85 constrict the functioning of a fund created by the State of New Hampshire to support an emergency response capability in the case of oilspills. I also am concerned about its impact on a pending proposal for the State to create a similar fund dealing with hazardous substances.

I am willing to support this legislation, in fact, only on the understanding that H.R. 85 does not preempt any state fund or activity or form of compensation not explicitly provided in the Federal legislation. In other words, we are not making the mistake of saying, in effect, if the Feds don't do it nobody else can.

Despite such reservations, I favor passage of this bill. It should expand the funds available for cleanup of eligible sites in New Hampshire, including Nashua and perhaps other communities. Such an expansion of funds also should remove any excuse for EPA not to move in when ground water is contaminated and surface waters are threatened, instead of waiting until toxics actually are found in the surface waters.

And I support the bill, finally, in the hope that the way it is carried out is subjected to vigorous oversight and a disposition to modify it to give the States a larger role as warranted.●

● Mr. MURPHY of New York. Mr. Chairman, I rise in support of H.R. 85 in the form of the substitute before us today.

H.R. 85 was introduced early in the 96th Congress and was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation. The bill was patterned closely after H.R. 6803, which passed the House in the 95th Congress. The bill's provisions parallel existing law, specifically title III of the Outer Continental Shelf Lands Act, as amended in 1978. Title III contains all the ingredients of a comprehensive liability and compensation system for oil pollution but, of course, is limited in its application to Outer Continental Shelf activities. The statute is in place, however; necessary regulations have been promulgated and the system is working.

Two other statutes have established compensation and liability systems for oil pollution: The Trans-Alaska Pipeline Act and the Deepwater Ports Act. In each case, a claim for oil pollution damage is referred first to the polluter and then, if the polluter cannot or will not pay or if the polluter is unidentified, the claim is filed against a backup fund, established by fees assessed on oil. H.R. 85, therefore, is a logical and evolutionary development of existing law.

The events of the summer of 1979 underscored the urgency of problems associated with oil pollution, particularly the need to provide a means of relief to those who suffer damage.

On June 30, 1979, the container ship *Sea Speed Arabia* ran aground off Staten Island, resulting in the discharge of 100,000 gallons of diesel oil that virtually surrounded Staten Island and polluted the waters of upper and lower New York Bay. Beaches and parks were closed and marine life was damaged many miles from the origin of the spill.

On July 19, 1979, the supertankers *Aegean Captain* and *Atlantic Empress* collided off the coasts of the island nation, Trinidad and Tobago. Both ships were holed, creating a gigantic oilspill that only chance took out to sea instead of onto the resort beaches so vital to the economy of the islands. The *Atlantic Empress* sank several days after the collision, taking with her to the bottom the oil trapped in intact cargo tanks. She was the largest ship in history to sink.

In the first week of August last year, oil from the Mexican oil well Ixtoc I, which suffered a blowout on June 3, reached the waters and beaches of south Texas. The well discharged oil variously estimated as 10,000 to 50,000 barrels per day until it was finally capped in March 1980. This was the largest oilspill in history. Its true dimensions have yet to be determined. Its ultimate impact upon Texas, upon other States littoral to the Gulf of Mexico, and on the resources of the gulf itself, remains to be measured.

On November 1, 1979, the freighter *Mimosa* collided with the tanker *Burmah Agate* at the mouth of the Houston Ship channel. *Burmah Agate* burned for 2 months, discharging oil all the while, resulting in pollution that impacted the nearby Texas beaches and the adjacent rich fishing grounds.

More recently, in May of this year, the 640-foot tanker *Esso Portland* was flooding in position 65 miles off the North Carolina coast with a cargo of 300,000 barrels of heavy fuel oil. Only the prompt assistance of commercial divers and the Coast Guard pollution strike team prevented the ship from sinking. Had this rescue effort not succeeded, yet another major oilspill would have occurred in a sensitive coastal area of the United States.

These concrete examples are cited to underscore the need for prompt enactment of H.R. 85. I concentrate on the provisions of the bill that pertain to oil because those are the provisions on which the Committee on Merchant Marine and Fisheries has so long labored.

The concept behind title I of H.R. 85 is simple and straightforward. The title would establish a comprehensive compensation and liability regime for oil pollution damage. It would streamline claim procedures, claims to be made first against the polluter and second against a backup fund where the polluter refuses or is unable to pay or cannot be identified [Sec. 112]. It would facilitate cleanup of oil pollution by creating incentives for the polluter to act promptly and by providing a ready source of federally administered funds, less limited than now exists, for use by Federal and State agencies in cases where the polluter does not institute proper cleanup measures [Sec. 221]. All the features of the title mesh to form sound, workable, and internally consistent legislation.

A superfund bill should provide a means to assure compensation where only inadequate and fractional means now exist. While superfund legislation can have some indirect effect in preventing pollution from vessels and facilities, that should not be viewed as its principal purpose. Environmental protection is best achieved by a direct attack on the root sources of pollution.

Such an approach is exemplified by measures such as the Port and Tanker Safety Act of 1978, the International Tanker Safety and Pollution Prevention Protocols of 1978, and the Coast Guard regulations already published, which implement the act and the protocols. These measures establish new high standards for oil tankers, together with a strict enforcement regime. In contrast, H.R. 85 is designed to facilitate cleanup and to provide a ready remedy for those injured by oil pollution when it does occur, despite strict preventive measures in force.

What we seek is legislation that will provide adequate and timely relief for those affected by oil pollution. This includes individuals harmed by oil pollution from any source. It includes the Federal Government, which uses its resources to cleanup the oil and restore the environment to its prespill condition. And it means State and local governments that assist in cleanup and act in the capacity of trustees for natural resources [Sec. 111].

In this light of what the bill is and what it is not, major features of H.R. 85 fall into perspective. These features, including Federal preemption provisions, limits of liability, and claims procedures, are the result of long and careful consideration. Each feature is an essential part of a carefully designed whole. H.R. 85 deserves wide support, and I urge my colleagues to vote in favor of its passage today.●

● Mr. HARSHA, Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. To understand why this bill is necessary, I think it is important to review the bidding on Federal legislation. The first initiative of modern day importance is generally regarded to be section 11 of the 1970 Water Quality Improvement Act which established a comprehensive oil pollution cleanup and liability program and authorized the implementation of a national contingency plan. In 1972, Congress expanded this program to add designated hazardous substances—the first time oil and hazardous substances were linked under one program.

However, EPA was unable to promulgate regulations to implement the hazardous substances program authorized by the 1972 amendments until 1978. When they did, the American Waterways Operators and the Chemical Manufacturers Association's predecessor organization successfully challenged the regulations in court. It took legislation to resolve the problem—and I might add that effort was a cooperative undertaking between EPA, CMA, AWO, and the Congress—all supported the final product which demonstrates what can be accomplished. The regulations were finally promulgated in August 1979 (a date that would become important in later legislative considerations) and for the first time the complete program was in place to address pollution of the navigable waters by spills of oil and hazardous substances.

The use of petroleum in the United States has played a major role in the tremendous growth of our national industrial complex. The continued need for oil for the foreseeable future is unquestioned. Currently, the United States imports about 45 percent of its oil requirements and it is estimated that this dependence will continue to increase. This need to import large volumes of oil presents a serious threat of oil pollution to our waters.

The 1970 act resulted in part from events such as the grounding of the tanker *Torrey Canyon* off the southeast coast of England in 1967, and the blowout of the production platform off Santa Barbara, Calif., in 1969; recently the grounding of the *Amoco Cadiz* and sinking of the *Argo Merchant* and the Campeche spill in the Gulf of Mexico have again focused public attention on the problem of oil pollution. Existing law has proven inadequate to handle the claims arising from oilspills. First, recovery under common law theories of negligence proved difficult. In order to recover, claimants had to identify the spiller and had the burden of proving that the spiller failed to exercise reasonable care to prevent the spill. Second, statutory law allows a vessel owner under certain circumstances to limit his liability to the value of the vessel and its cargo after the incident. In the case of collisions, groundings, or other circumstances which result in extensive oilspills, this value may often be little or nothing since the vessel is destroyed and the cargo list.

In response to these problems, Congress has enacted several statutes which contain provisions governing oilspill liability. These include: The Federal Water Pollution Control Act which I have discussed: the Trans-Alaska Pipeline Authorization Act; the Deepwater Port Act; and the Outer Continental Shelf Lands Act. In addition, many of the States have enacted legislation concerning liability for oilspills. This patchwork of laws contained sometimes conflicting provisions relating to oil pollution liability and compensation. In 1974, Congress began work on a comprehensive oil pollution liability and compensation bill to consolidate the provisions of these many acts with regard to damages caused by oil pollution.

A bill finally passed the House in 1976—H.R. 6803, which was virtually identical to title I of H.R. 85 and dealt with oil pollution liability and compensation. The bill died, however, because the Senate would not accept preemption of State programs which duplicated the Federal law and, and this was important, because the bill did not address hazardous substances pollution issues [Sec. 114].

In this Congress a House bill was introduced which was virtually identical to the ill-fated H.R. 6803—H.R. 85. The bill was approved by the Merchant Marine and Fisheries Committee on May 15, 1979, but had to also receive approval by Public Works and Transportation, which shared jurisdiction over the bill. In June of 1979 the administration announced its comprehensive superfund bill dealing not only with oil pollution of navigable waters but also hazardous substances pollution and cleanup of dump sites.

This initiative was in response to growing perception of a major environmental concern which was brought to public attention by

Love Canal, N.Y.; Valley of the Drums, Ky.; Pittston, Pa., and a number of other incidents.

The Public Works Committee held hearings in the fall of 1979 and the spring of 1980 on the legislation. Additionally, members of the Subcommittee on Water Resources visited the Love Canal, and a separate hearing on PCB contamination was conducted at Alma, Mich. The outcome of these investigations was to add to H.R. 85 a new title, and a separate fund, to address hazardous substances pollution in the same manner as oil pollution **[Sec. 221]**. While the Ways and Means Committee changed the bill slightly, including converting the fees imposed to a tax and establishment of dedicated trust funds, the key point is that the bill has moved to the point of floor consideration without substantial change and with widespread support in Congress. Why?

A review of some points made at the hearings is helpful—Mr. Douglas Costle, Administrator of the Environmental Protection Agency testified in April that:

The historical treatment of oil and hazardous substances under a single regime would be jeopardized if oil was treated differently than hazardous substances;

The problem of hazardous spills is acute and more threatening than oil;

Between October 1978 and April 1980, 4,257 discharges of substances other than oil were voluntarily reported to EPA, of which 2,225 involved designated hazardous substances under the 311 program;

EPA forecasts that by 1983, 5,000 to 6,000 hazardous substances spills may be reported annually;

As more responses to hazardous pollution are required the Federal fund has been repeatedly drawn down and more demands are placed on the Treasury for taxpayer dollars;

H.R. 85 would solve the financial problem for oil pollution response but not for hazardous pollution; creating operational problems and inequities; thus, there would no longer be a unified scheme.

Opponents of the legislation stressed these themes for the committee:

Oilspills should be handled separately from chemical spills; their different nature justifies separate consideration **[Sec. 104(a)(2)]**;

Chemical spills should be handled separately from waste disposal incidents. I would note parenthetically that existing law authorizes cleanup at dump sites when they pose a threat to navigable waters and 24 areas are currently receiving assistance for emergency cleanup.

Common law and statutory law in various States provide a flexible and responsive system for compensating individuals for personal injury and property damage that may occur from spills of hazardous substances;

Legislation to clean up old dump sites should be adopted for emergency assistance and containment when there is an imminent threat and no other party is taking responsible action, financed by Federal appropriations, recovery from dumpers and matching State money.

The committee did not concur with the position of the opponents. In its report it noted that:

> The Committee on Public Works and Transportation agrees with the need for a comprehensive scheme to provide for recovery of damages caused by oil spills, recovery of cleanup costs, and establishment of liability and requirements for financial responsibility. The Committee believes there is a similar need with regard to certain hazardous substances which are discharged into navigable waters, and accordingly added a new Title III to H.R. 85 which addresses this need in essentially the same fashion as oil spills are addressed in Title I. The Committee notes that the response effort with respect to spills of oil and hazardous substances has been carried out under a single Federal statutory authority since 1972 when section 311 of the Federal Water Pollution Control Act Amendments was enacted. Under section 311, a Federal cause of action with respect to removal costs of certain discharges of hazardous substances was created and the National Contingency Plan, originally established by section 11 of the Water Quality Improvement Act, was expanded to include hazardous substances **[Sec. 105]**. In light of this history, the committee believes that it is appropriate to address the liability, cleanup and economic damage recovery issues associated with spills of designated hazardous substances in the same manner as Title I of H.R. 85 addresses for spills of oil.

This decision was based upon the premise that there is a bona fide problem; that existing law does not provide adequate resources to address the problem; that the victims do not receive adequate compensation and thus a backup mechanism is necessary; that the problem is likely to increase, not decrease, in the future; that the taxpayers generally should not be forced to pay the tab through Federal appropriations—rather, those that pose the problem (and ultimately the consumers of these goods) should pay—just as they do for airport and airway services and highway improvement programs.

If legislation fails to be enacted by this Congress the problem is not going to go away. This is the third Congress for oil superfund legislation. If the Senate bill were a little more reasonable with respect to cost and especially liability issues, I feel we would enact legislation this year. When Members are contacted by opponents of H.R. 85 the usual basis for opposition is generally not founded upon the purpose of the bill, but rather that H.R. 85 could provide the impetus to enact S. 1480, the Senate measure. To those concerned with the sweeping nature of the Senate initiative I would say to them that this posture is consistent with the Senate's past actions. In 1971 and 1972, the Senate passed legislation amending the Federal Water Pollution Control Act that, if adopted, might have shut down the economy.

Yet, the House version of the legislation was a reasonable initiative which struck a blance between environmental and economic concerns—and that position prevailed in the final bill. Again in 1977 the Senate adopted overly strict controls but the House view again prevailed and the 1977 Clean Water Act has been hailed as a reasoned environmental initiative. Now in 1980 we again have concern over the pending Senate bill. I would say to my colleagues that I will not support unreasonable legislation. H. R. 85 is a reasoned, well-thought-out measure. When the House Members of the conference return to the membership of this distinguished body it will be with a balanced bill—just as we have every time in the past.

Mr. Chairman, I would like to discuss two provisions for the purpose of establishing legislative history. The first is the definition of "owner" contained in title I of H.R. 85 **[Sec. 101(20)]**. During consideration of this measure by the Public Works Committee I offered an amendment to clarify the definition, as reported by the Committee on Merchant Marine and Fisheries. This change was necessary because the original definition inadvertently subjected those who hold title to a vessel or facility, but do not participate in the management or operation and are not otherwise affiliated with the person leasing or operating the vessel or facility, to the liability provisions of the bill.

While the Merchant Marine Committee report indicated this situation was not intended the statutory language is unclear. Therefore, I offered clarifying language to truly exempt those who hold title but do not participate in the operation or management activities. My amendment also requires that those that hold title cannot be affilated in any way with those who lease or charter the vessel or facility. This was done to prevent the establishment of "dummy" corporations, with few assets, which would be the responsible party for the purpose of the act.

Mr. Chairman, I also offered an amendment to require that tank motor carriers have a maximum minimum liability and establish and maintain evidence of financial responsibility for that minumum **[Sec. 107(c)]**. Under H.R. 85 as reported by Merchant Marine and Fisheries, onshore facilities were subject to a maximum liability of $50 million, but the Secretary, by regulation, could reduce that liability—theoretically to zero. Also, there was no requirement to establish and maintain evidence of financial responsibility to meet this liability **[Sec. 108]**.

My amendment establishes a lower limit of liability below which the Secretary cannot establish a tank motor vehicle's liability. My amendment establishes, for carriers of oil with a capacity of 3,500 gallons or greater, a minimum liability of $2 million; for carriers of hazardous substances the minimum is $5 million. Carriers with a capacity of less than 3,500 gallons are exempt from these requirements. These levels are insurable and at reasonable cost. With this amendment a loophole has been stopped, which could have potentially exempted certain carriers from meaningful liability and financial responsibility requirements. This is an important consideration when considered in the context of the problem of "midnight dumpers." Without the amendment there would be no requirement to maintain evidence of financial responsibility.

Thus, a dumper might not be in violation of H.R. 85 until the actual discharge and there would be no assurance that he would have the resources to pay the compensation for damages. My amendment assures that those resources will be available and that the midnight dumper will be in violation of the law when he transports hazardous substances without evidence of financial responsibility.

Mr. Chairman, I would note that the recently passed Motor Carrier Act of 1980 establishes certain requirements relative to minimum financial responsibility for transporters of oil and hazardous substances, section 30. I would expect that the Secretary will exercise maximum flexibility in implementing the requirements of the Motor Carrier Act of 1980 and the requirements of H.R. 85. One approach would be to treat the amendments made by H.R. 85 as applicable to a special class of carrier. This would allow the regulations implementing the Motor Carrier Act to also address the requirements of H.R. 85.

Mr. Chairman, I believe that the bill before you is a reasoned approach to the problems of oil and hazardous substances pollution of navigable waters. It builds upon existing programs and makes them better. It addresses the needs of the American public in a cost-effective manner. It is supported by the administration, environmentalists, and now by industry. I urge my colleagues to support its passages.●

● Mr. LENT. Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act. I do so with a sense of deja vu for this is the third Congress in which we have tried to enact a comprehensive system of liability and compensation for damage caused by oil pollution.

This legislation is designed to deal with oil and chemical spills in the U.S. navigable waters and their adjacent shores. The potential for oil spills and consequent environmental damage is increasing as a result of the very large volume of petroleum and petroleum products moving within our Nation. We are importing about 8 million barrels of crude oil per day—or more than one-fourth of the total crude oil moving in worldwide trade. Our domestic oil and resources from the Outer Continental Shelf add approximately another 11 million barrels of crude oil moving each day; with exploratory drilling underway in the Baltimore Canyon area of the Atlantic Ocean, there is no reason to believe that those figures will decrease in the foreseeable future. In all likelihood they will increase. With more and more petroleum products being transported, the likelihood of spills is, unfortunately increasing.

My Fourth Congressional District is located on Long Island, one of the areas in the Nation most vulnerable to oil pollution damage. The hundreds of miles of Long Island coastline contain some of the finest beaches, harbors, estuaries, fishing grounds, and wildlife refuges to be found anywhere in the Nation. We on Long Island have fought for many years for adequate protection for these fragile areas, and the equally fragile ecosystems they support. The Comprehensive Oil Pollution and Liability Act offers much needed additional protection for Long Island's fragile coastline and surrounding waters.

It is also absolutely necessary that we establish appropriate procedures to facilitate cleanup and provide compensation for parties adversely affected by oilspills. H.R. 85 is designated to meet that need by guaranteeing a prompt and adequate response.

H.R. 85 establishes two funds, one for oilspills and one for hazardous substance spills, which would be used to pay for cleanup and compensation if the spiller were unknown or did not pay the costs voluntarily. The oil pollution liability and compensation trust fund, which could recover its costs from responsible parties, would be financed through a 1.3-cent-per-barrel excise tax on all crude oil received at U.S. refineries and imported petroleum products. Fund revenues would be supplemented by assets of funds it supersedes—for example, it will acquire the assets and liabilities of the trans-Alaska pipeline liability fund; fines, including penalties for oilspills under the Clean Water Act; and compensation payments recovered through subrogation from parties liable for oil pollution under the bill [Sec. 221].

This financing structure assures that those who cause pollution pay for it, rather than the taxpayers as is usually the case under the existing patchwork of Federal, State, common, and admiralty law governing liability, cleanup, and compensation for oilspills.

As well, the bill provides that owners and operators of the polluting vessels or facilities would be liable for damages, and would be required to carry insurance or otherwise establish financial responsibility for spill incidents.

I focus on the oil pollution aspects of this legislation because I believe they essentially are without controversy and our experience over the past 9 years convincingly demonstrates the need for corrective legislative action.

Oilspills are serious. Blackened dying birds and fish, oil slicks, and beaches fouled by tar are only the most obvious signs of environmental pollution resulting from oilspills. However, oil can also be toxic to a range of marine organisms. Fish can become disoriented and lose their ability to migrate, reproduce, or secure food. Fishing grounds can be severely damaged and shellfish made unfit for human consumption. Thus, the environmental and economic effects of oil pollution are both serious and wide ranging.

Since 1971, Federal cleanup costs for oilspills have been compiled. The figures are in and they are high. For example, the Coast Guard reports that in 1977, 10,620 spills—none of them labeled catastrophic—released 17.6 million gallons of oil, at a Federal cleanup cost amounting to nearly $9 million. If one large spill had occurred, the figure would be far higher; consider the 1967 *Torrey Canyon* wreck which released 29 million gallons of crude oil, costing some $15 million to clean up and $25 million in damages were claimed. More recently, the 1978 grounding of the *Amoco Cadiz* off the coast of France released 67 million gallons of crude and damage claims totaled more than $1 billion.

Clearly the time has come for prompt and favorable action on this needed legislation to insure rapid cleanup of spills and adequate compensation for damages. H.R. 85 can assure that and I urge my colleagues to join in voting for the proposed Oil Pollution Liability and Compensation Act.●

Mr. SNYDER. Mr. Chairman, I have no futher requests for time. I yield back the balance of my time.

Mr. ROBERTS. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. BIAGGI. Mr. Chairman, I have no further requests for time. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Bennett) having assumed the chair, Mr. Natcher, Chairman of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes had come to no resolution thereon.

GENERAL LEAVE

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 85, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

[From the Congressional Record, Sept. 19, 1980, pp. H9185-H9209]

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. BIAGGI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

The SPEAKER pro tempore (Mr. Bennett). The question is on the motion offered by the gentleman from New York (Mr. Biaggi).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOTTL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 302, nays 5, answered "present" 1, not voting 124, as follows:

[Roll No. 568]

YEAS—302

Akaka
Albosta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Bonior
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carney
Carr
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Daniel, R. W.
Danielson
Dannemeyer
Deckard
Dellums
Derrick
Derwinski
Devine
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan

Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Harris
Hightower
Hollenbeck
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lungren
McCloskey
McCormack
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Udall
Vander Jagt
Vanik
Walgren
Walker

Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams,Mont.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

NAYS—5

Dickinson
Holt
McDonald
Mitchell, Md.
Paul

ANSWERED "PRESENT"—1

Ottinger

NOT VOTING—124

Abdnor
Addabbo
Alexander
Anthony
Applegate
Barnard
Beard, Tenn.
Bereuter
Bethune
Boner
Bonker
Brooks
Brown, Ohio
Burton, Phillip
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Cleveland
Collins, Ill.
Corman
Cotter
Crane, Philip
D'Amours
Daniel, Dan
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Findley
Foley
Ford, Mich.
Ford, Tenn.
Garcia
Gingrich
Goodling
Grassley
Gray
Hammerschmidt
Hanley
Hansen
Harkin
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Hutto
Ireland
Jacobs
Jenrette
Johnson, Colo.
Jones, N.C.
Kelly
Kindness
Leach, La.
Lederer
Lent
Lloyd
Luken
Lundine
McClory
McDade
McEwen
McKinney
Marlenee
Mathis
Mattox
Mavroules
Mazzoli
Mica
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Nolan
Pashayan
Pepper
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Smith, Iowa
Stanton
Stark
Steed
Stockman
Symms
Thomas
Ullman
Van Deerlin
Vento
Volkmer
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Yates
Zeferetti

□ 1320

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 85, with Mr. Natcher in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Thursday, September 18, 1980, all time for general debate on the bill had expired.

Pursuant to the rule, an amendment in the nature of a substitute printed in the Congressional Record of August 27, 1980, by the gentleman from Louisiana (Mr. Breaux) shall be considered by titles as an original bill for the purpose of amendment under the 5-minute rule, in lieu of the amendments recommended by the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means, now printed in the bill, and each title shall be considered as having been read.

No amendment to title V of said substitute shall be in order except pro forma amendments for the purpose of debate and amendments recommended by the Committee on Ways and Means which shall not be amendable except by pro forma amendments.

After the consideration of title V of the substitute and any amendments thereto, no further amendment to the bill shall be in order.

The Clerk will designate section 1.

Section 1 reads as follows:

That this Act may be cited as the "Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act".

The CHAIRMAN. Are there amendments to section 1? If not, the Clerk will designate Title I.

Title I reads as follows:

TITLE I—OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by title V of this Act;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue;

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline contructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 U.S.C. 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 103(b)(5) of this title;

(o) "navigable waters" means the waters of the United States, including the territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Pollution Liability Trust Fund established in title V of this Act.

(b) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) injury to, or destruction of, natural resources; and

(4) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under item 2 by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 3, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 4, by any United States claimant if the claimant derives at least 25 percent of this earnings from activities which utilize the property or natural resources;

(5) under items 2 through 4, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however,* That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(6) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (6) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(bb)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $2,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act or war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irrestible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claiment, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of this Act, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(bb), there shall be no liability under paragraph (1), hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfication of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this act to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitiled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on

behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts as the Secretary, by regulation, shall establish, but in no event less than $2,000,000.

(c) Any claims authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

Sec. 106. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

Sec. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims for compensable damages under title V of this Act shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106(b), or

(2) where the owner or operator may recover under section 103(b) (1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(a) (2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of claims for compensable damages under title V, to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim for compensable damages under title V presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for uncompensated damages may be presented to the fund.

(e) In the case of claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsections (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3) the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to mulitiple claimants, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State Agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i) (1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of

section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any from the date upon when the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorney's fees; and

(2) for a claim presented to the fund under section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: Provided, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106 the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss which is a compensable damage under title V, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. There are authorized to be appropriated for those fiscal years which begin on or after October 1, 1980, such sums as may be necessary to carry out the provisions of this title.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of this title during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of, and the administration of the liability provisions of, this title.

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment [Secs. 101(11), (27), and (20); 111(l); and 108].

The Clerk read as follows:

Amendment offered by Mr. Biaggi: On page 1, line 10, strike "title V" and substitute "section 521".

On page 6, lines 3 and 4, strike "the Canal Zone,".

On page 7, line 7, strike "facility;" and substitute "facility, and in the case of an offshore facility, the term includes the operating holder of a leasehold interest or permit for the exploration of oil;".

On page 11, lines 23 and 24, strike "claimants: *Provided, however,* That condition (C) shall not apply" and substitute "claimants, except that".

On page 12, line 7, strike "port; and" and substitute "port only condition (B) of this paragraph shall be applicable to that claim; and",

On page 21, line 9, add "In the case of an owner who is the holder of a leasehold interest or permit for the exploration of oil offshore, evidence of financial responsibility established for the leasehold to meet the maximum liability applicable under paragraph (1) of this subsection shall cover the liability of that owner for all facilities located on the leasehold.".

On page 22, after line 2, add a new subsection:

"(d) The total liability under this title of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility under this title, except that nothing in this subsection shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.".

Mr. BIAGGI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, the amendments I am offering have been worked out jointly by the Merchant Marine Committee and the Public Works Committee. They do not amend title V of the bill or in any way affect its provisions.

I would like to briefly explain those amendments that are not merely technical and conforming:

On page 7 of the bill, the amendment would, in the case of an offshore facility on a leasehold where the facility owner and leaseholder are different entities, make both liable for damages resulting from oil pollution [**Sec. 101(20)**]. Under the present form of the bill, only the facility owner—usually the drilling contractor—is liable. The proposed amendment would also make the leaseholder liable. He is the one who hires the drilling contractor, controls his operations, and receives the benefits of the leasehold. He is also generally better able to show financial responsibility. The amendment should provide an additional incentive to leaseholders to select competent drillers and supervise them carefully. The amendment is consistent with present industry practices.

Another aspect of the problem of leaseholds is found in the amendment to page 21 of the bill [**Sec. 108**]. This allows a leaseholder to make one showing of financial responsibility to cover all facilities on the leasehold. This provision will simplify administration of the bill and reduce paperwork requirements. It is consistent with the comparable provision applicable to vessel fleet owners, and should result in a showing of financial responsibility by the entity best able to afford it and with the most interest in the drilling enterprise.

The amendment to page 22 of the bill provides that a guarantor who provides a certificate of financial responsibility will not be liable for claims or removal costs in excess of the amount stated in that certificate [**Sec. 108(d)**]. This amendment is necessary in order to assure that insurors will provide insurance under the bill. They are reluctant to do so because of certain language in the bill that they believe could be construed to make them liable for claims in excess of the certificate limits. They have not, in fact, provided insurance coverage under similar language enacted in 1978 when the outer continental shelf oilspill pollution fund was established. The amendment would express specifically what has always been the intent of the bill—that the guarantor's liability under the legislation is limited to the amount stated in the certificate of financial responsibility he supplies.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Texas.

Mr. ROBERTS. I thank the gentleman for yielding.

I agree with the gentleman's amendment. I think it clears up an area here that was in doubt.

I support the amendment.

Mr. **Breaux**. Mr. Chairman, will the gentleman yield?

Mr. **Biaggi**. I yield to the gentleman from Louisiana.

Mr. **Breaux**. I thank the gentleman for yielding.

Mr. Chairman, I have a question for Mr. Biaggi in connection with the effect of his amendment regarding the filing for certificates of financial responsibility **[Secs. 101(20), and 108]**. Historic and industry practice in offshore drilling operations has placed the financial responsibility for oilspill pollution damage on the leaseholder. The reason the oil company leaseholder is willing to assume that burden is because the service companies who are the owners of the mobile offshore drilling units are:

First, unable to secure sufficient insurance coverage for risk;

Second, the operations of the rig are under the direction, control and supervision of the oil company leaseholder for whom they work; and

Third, there are numerous other service contractors aboard the mobile rig from time to time conducting operations and using their own equipment under the direction, control and supervision of the oil company leaseholder.

If I understand correctly, the proposed definition of owner of a facility and the expanded concept that a facility includes a leasehold or permit right, allows the requirements of the law regarding the filing for a certificate of financial responsibility to be met completely for all the service contractors owning equipment, including mobile drilling rigs, when the leaseholder files for the certificate.

If this is so, I heartily endorse this provision which would eliminate the potential need for duplicate filings by each and every service company contractor working for a leaseholder.

The liability of the parties can then be determined individually based upon their own contractual relationship with the oil company leaseholder who hired them and directed their activities. Is this, indeed, a correct interpretation of the gentleman's amendment?

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The **Chairman**. The time of the gentleman from New York (Mr. Biaggi) has expired.

(At the request of Mr. Breaux, and by unanimous consent, Mr. Biaggi was allowed to proceed for 2 additional minutes).

Mr. **Biaggi**. The gentleman is, indeed, correct in his observation. This problem developed as a result of title III of the 1978 Outer Continental Shelf Lands Act Amendments. Our effort here today is to insure that the same problems do not exist in this legislation.

Very clearly, the insurer should be limited in liability to the amount of money that is expressed in the certificate. There is no question that his liability ceases at that point.

Mr. **Breaux**. I thank the gentleman for the clarification.

Mr. **Livingston**. Mr. Chairman, will the gentleman yield?

Mr. **Biaggi**. I would be delighted to yield to the gentleman from Louisiana (Mr. Livingston).

Mr. **Livingston**. Mr. Chairman, I rise to seek clarification on a technical amendment that has been offered by my colleague from the State of New York (Mr. Biaggi) and been supported by the gentleman from Kentucky (Mr. Snyder). As I understand it, the amendment seeks to clarify or set the aggregate liability of any guarantor at that amount which the guarantor has provided as evidence of financial responsibility. It does not change the rights of any claimant to recover for damages for economic loss limits under the liability scheme established, and is meant to secure and solidify the provision of finanical reponsibility from the insurance market.

However, due to the construction of the exception clause to the amendment, insurers have advised me that they remain unwilling to provide the evidence of financial responsibility, since the provision can be construed to expose them beyond the limits set forth in their certification of financial responsibility. I would like to clarify my understanding that the purpose of the exception clause is merely to preserve the rights and obligations of any owner or operator for whom evidence of financial responsibility is provided, arising under common law, or out of the contract with his guarantor. It is not to be viewed as a means for undermining the absolute certainty that insurers will require concerning their liabilities as guarantors by allowing outside parties to raise rights inherent in the guarantee contract. Without this certainty, insurers and other guarantors will be reluctant to provide the required evidence of financial responsibility.

Does the gentleman concur in my understanding?

Mr. BIAGGI. The gentleman from Louisiana is correct in his understanding of the amendment. The purpose of this amendment is to clarify that there is no intention to impose liability on guarantors under the direct action provisions of this statute in excess of the amount provided as evidence of financial responsibility by the guarantor.

The exception clause is to make certain that nothing in the amendment shall be construed to change or limit the common law or contractual liability of any guarantor to the owner or operator for whom evidence of financial responsibility is provided. That clause does not affect the liability of a guarantor to those not party to the contract between the guarantor and the owner or operator.

Mr. LIVINGSTON. I thank the gentleman for his clarification.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. Snyder asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, I rise in support of the committee amendments being offered on title I of H.R. 85 dealing with oil pollution liability and compensation. The Committees on Merchant Marine and Fisheries and Public Works and Transportation have worked together to prepare these amendments. They are technical or clarifying in nature to carry out the intent of H.R. 85 as reported out by these two committees. In addition, they are totally consistent with the funding provision of title V.

These amendments include the following provisions:

The modification of the definition of "owner" to include the operating holder of a leasehold interest or permit in the case of an offshore facility to make not only owners and operators of facilities liable for damages from oil pollution, but also the leaseholder who receives the benefit of offshore exploration and exploitation.

The clarification that Canadian claimants have the same rights as existed under the trans-Alaska pipeline legislation.

A simplification of the establishment of financial responsibility on a leasehold, allowing an umbrella certificate of financial responsibility for all facilities on one leasehold similar to the provision regarding vessels.

A limitation of the liability of a guarantor in a direct action suit to the amount of the certificate of financial responsibility provided by the guarantor.

I want to make a particular note about the amendment addressing the limitation of the liability of a guarantor to the amount of the certificate of financial responsibility. This amendment is made to insure certainty of liability which will facilitate the ability of insurers to provide certificates of financial responsibility for owners, operators, and leaseholders offshore. This provision does not excuse an insurer from the responsibilities and obligations to an insured which exists independent of the statute. That is, this insurance or guarantor provision applies only to the direct action suit situation under section 105 and does not alter the relationship between an owner, operator, or leaseholder and the guarantor.

Thus, an insurer would not be able to use this provision to deny compensation under the insurance provided to an owner, operator, or leaseholder. In this regard, the remedies available at common law and other statutes would still be available.

In particular, this provision limits the liablity of a guarantor in a direct action suit to the face amount of the certificate of financial responsibility the guarantor provides in accordance with section 105 of this bill. Thus, in this situation, once a guarantor has paid a cumulative or aggregate amount of claims for one incident in an amount that equals the face amount of this certificate of financial responsibility, the guarantor would no longer be liable for damages to a party bringing suit under the direct action provision. In the event that liability should exceed the face amount of the certificate of financial responsibility, the direct action claimant would still have a cause of action against the spiller under section 103 [Sec. 111].

In this instance, the spiller may be found liable in excess of the amount of the certificate of financial responsiblity. It would be at this point that the insurance or other guarantee, provided to the spiller in addition to a certificate of financial responsiblity, would be generally available to compensate a claimant. However, the availability of this additional compensation would be a function of the relationship between the owner, operator, or leaseholder and the guarantor.

Mr. Chairman, I urge the adoption of the committee amendments to H.R. 85.

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Alaska.

(Mr. Young of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of the committee amendments developed by the Committees on Merchant Marine and Fisheries and Public Works and Transportation.

Particularly, I would like to underscore one of the committee amendments. That amendment is one which includes the provision setting forth the disposition of funds remaining in TAPS, once the claims certified by the Secretary of the Interior have been adjudicated. This restores a provision in H.R. 85 which was inadvertently omitted by the Breaux amendment in the nature of a substitute. This provision was also incorporated in the bills that passed the House and Senate in the 95th Congress. This concerns the relationship between the TAPS fund and the fund established through H.R. 85. The bill provides that at the time of transfer of the TAPS funds into the H.R. 85 fund, the Secretary of the Interior must certify the amount of outstanding claims. If the assets of the TAPS fund are greater than the certified claims by the Secretary of the Interior, the excess will be transferred to the H.R. 85 fund.

The provision offered by this amendment addresses those funds which remain in the TAPS fund to satisfy the certified claims. If the amount of claims actually settled is less than the amount certified, the difference shall be returned to the pipeline operator for rebate to the owners of the oil on a pro rata basis.

The disposition of funds which may remain in the TAPS fund after the disposition of certified claims is not addressed or contemplated in any other title of H.R. 85. Therefore, not only does this amendment restore the provision in the Breaux amendment to H.R. 85, it also serves to provide for the administrative disposition of any money remaining in the TAPS fund in an equitable manner to those who made payments into that fund. Furthermore, since this provision deals with funds remaining in the TAPS fund, it would not be inconsistent with the funding provisions of title V.

Mr. Chairman, I urge adoption of the proposed committee amendments.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Biaggi).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SNYDER

Mr. SNYDER. Mr. Chairman, I offer an amendment **[Secs. 107(c), and 108(b)]**.

The Clerk read as follows:

Amendment offered by Mr. Snyder; Page 15, line 4, strike out "$2,000,000" and insert in lieu thereof "$1,000,000".

Page 21, line 16, strike out "$2,000,000" and insert in lieu thereof "$1,000,000".

Mr. SNYDER. Mr. Chairman, my amendment would simply reduce the minimum level of financial responsibility for owners of tank trucks transporting oil from $2,000,000 to $1,000,000.

This amendment is needed in order to bring the requirements of H.R. 85 in line with the insurance requirements recently enacted by the Congress in the Motor Carrier Act of 1980, Public Law 96-296.

The Motor Carrier Act of 1980 establishes a comprehensive scheme of financial responsibility for motor carriers. All trucks of 10,000 pounds or more carrying oil or hazardous materials are required to have at least $1,000,000 insurance covering public liability, property damage, and environmental restoration. This would include tank trucks of 3,500 gallons or more carrying oil.

Under H.R. 85, which was reported by our committee prior to enactment of the Motor Carrier Act, tank trucks of 3,500 gallons or more carrying oil would be required to carry at least $2,000,000 in insurance. This is twice the minimum level established in the Motor Carrier Act. Rather than having two different requirements apply to these trucks, my amendment would make the provisions consistent by reducing the level in H.R. 85 to the same $1,000,000 level as is in the Motor Carrier Act.

I want to assure the Members that this action in no way compromises any of the protections embodied in H.R. 85. The $1,000,000 is the minimum level that the Secretary of Transportation can set. He or she will have the discretion to set higher levels, including $2,000,000, if the public interest so requires. I also want to emphasize that the amended provisions in H.R. 85 would in no way abrogate any of the insurance requirements in the Motor Carrier Act. All of the requirements of Public Law 96-296 would remain intact.

I urge the adoption of my amendment.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, I have no objection to the amendment. I will accept it, and as the gentleman from Kentucky stated, it is consistent with the newly passed legislation, the Trucking Deregulation Act of 1980.

Mr. DONNELLY. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman.

(Mr. Donnelly asked and was given permission to revise and extend his remarks.)

Mr. DONNELLY. Mr. Chairman, I rise in support of the amendment. I would like to associate myself with the remarks of the gentleman from Kentucky.

Mr. Chairman, I rise in support of the amendment of my colleague from Kentucky. Unless this legislation is amended, the small- and medium-sized oil dealers in New England would be faced with a situation threatening their very existence. Under the Motor Carrier Act of 1980, these companies are required to uphold a financial responsibility of $1 million. The provision we are trying to amend would increase that financial responsibility to $2 million. This would have a disastrous effect on small operators.

Currently, New England, New Jersey, New York, and Pennsylvania consume well over 50 percent of our Nation's home heating oil. Under passage of this legislation the cost of insurance of the companies would surely rise and would be forced to be passed on to the consumers. The average dealer in New England operates 2.6 trucks. We cannot continue to pass legislation which will overregulate our country's small businessmen. The sum suggested, $2 million, is certainly not commensurate with a spill from trucks of such small capacities. Instead, the $1 million figure which is already in the existing law will cover the financial responsibility adequately.

I ask the support of my colleagues for this amendment. Unless this amendment is acted on favorably, we would be compelling thousands of small businessmen to take on a tremendous and unnecessary financial burden. We have the great opportunity in this vote to cast our support for both small business and the consumers, I urge my colleagues to support this amendment.

The Chairman. The question is on the amendment offered by the gentleman from Kentucky (Mr. Snyder).

The amendment was agreed to.

The Chairman. Are there additional amendments to title I?

AMENDMENT OFFERED BY MR. WYATT

Mr. Wyatt. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wyatt: Page 37, after line 14, insert the following:

IXTOC I OILSPILL

Sec. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with a blowout of Ixtoc I; Bay of Campeche, Mexico, on June 3, 1979; *Provided, however,* that the obligations of the Oil Pollution Trust Fund to carry out this subsection shall not exceed $75 million. If compensable damages exceed $75 million, they shall be reduced proportionally as determined by the Secretary.

(b) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsection (a).

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) of this section and which is merged in such judgment.

Mr. Wyatt (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. Wyatt asked and was given permission to revise and extend his remarks.)

Mr. Wyatt. Mr. Chairman, on June 3, 1979, Ixtoc I, an oil well in the Bay of Campeche, Mexico, blew out and began what has become the largest oil spill in history. Estimates of the amount of oil spilled ranged from 120 to 350 million gallons in the 9 months the well flowed uncontrolled.

It took only 2 months for the oil to travel the 500 miles on Gulf of Mexico waters between the well and the U.S. coastline where the well caused economic losses to many businesses, most associated with tourism, and shrimpers who had to leave their normal fishing grounds and ports of call.

The United States has spent almost $8 million cleaning up the oil and that does not include the assessment or the extent of damages. Although $355 million in claims have been made in the numerous lawsuits filed, the remaining uncompensated damages are, in my estimate, no more than $20 million, and probably around $10 million.

The House has already expressed its will in this matter. Chairmen John Murphy and Ray Roberts set hearings in Corpus Christi, Tex., last September. These hearings were cochaired by Chairman Roberts and John Breaux, and attended by Messrs. Studds, Livingston, McCloskey, and Gonzalez. I again thank you for sacrificing a weekend to hear testimony with Mr. de la Garza and me. As a result of those hearings, 17 Members, including myself and Mr. de la Garza, have sponsored or cosponsored one or more Ixtoc relief bills. I would like to take this opportunity to again thank those Members.

In hearings before committees of the House, the administration has repeatedly stated it favored a comprehensive compensation and liability scheme which would cover incidents such as Ixtoc I oil pollution. Had this spill occurred after the date of enactment of such a scheme as is contained in this bill, compensation would be available for provable losses as this amendment provides.

H.R. 5338 by Mr. Roberts, Mr. Breaux, Mr. de la Garza, and myself was passed by the House this June with both Chairman Buzz Johnson and Mr. Clausen speaking in its behalf. Thus far, the Senate has not acted. Fellow Members, we need this amendment to insure that Ixtoc relief will be a subject of conference on H.R. 85.

Briefy stated, this amendment allows Ixtoc damages to be paid from the fund not to exceed $75 million—in which case compensable damages would be reduced proportionally—and provides that compensation is available to litigants even after a judgment is rendered to allow all claims to be consolidated with the fund.

I will not take any more time repeating the arguments for Ixtoc relief as the House has already determined it is necessary. In fact, the House-passed relief measure provides compensation for a broader range of damages.

Mr. Chairman, I feel this amendment is both reasonable and necessary and I move its adoption.

Mr. BIAGGI. Mr. Chairman, I rise in opposition to the amendment. I do so most reluctantly, because the gentleman from Texas (Mr. Wyatt) is a valuable member of the Committee on Merchant Marine and Fisheries and he has supported the total concept of H.R. 85. We appreciate deeply his contribution. The fact is, as he has stated, the House has acted previously. They passed a bill that would provide some $80 million. Such sums would come from appropriations, however. It would seem in the light of that, that there should not be any opposition to this amendment at this time, except that the situation is somewhat different.

The moneys from the original bill would come out of general revenues. These moneys—the amendment is limited to $75 million—would go directly against the fund that has not yet been created. The moneys that would go to that fund would be from two sources initially and that is from the Trans-Alaska Pipeline Act and from the Outer Continental Shelf. Those moneys will amount to some $5 million.

It is conceivable that if the gentleman's amendment was to be enacted the claims against the fund from the Ixtoc spill would wipe out the fund. Moreover, what makes it even more difficult to accept the amendment is that the fund would then be required to go against the spiller, which is in the normal course of events. Under ordinary circumstances we would expect to recover. However, in this case the spiller is the Mexican Government, or at least that is the contention.

I can see, and I am sure the gentleman understands, that could be litigation that could be endless and in the end fruitless.

Then there is the question of retroactivity.

Mr. WYATT. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I am delighted to yield.

Mr. WYATT. In regard to the last point, is it not also true that if compensation is not provided that the Mexican Government could also become involved and, in fact, litigation currently is pending before the Federal courts in Houston that the Mexican Government is becoming very reluctantly involved in, the suits have been filed by Citco and Citco has asked that Pemex, which is the Mexican oil company, be involved in the suits. They are going to have to pay off these damages under the law that we live under and also under the law that Mexico lives under.

Mr. BIAGGI. They are in court. That is the best that I will concede, they are in court. The contention is the Mexican Government is involved. I think the operative word is that the Mexican Government is becoming "reluctantly" involved. That may even be a modification of their original position, which was most vehement in its denial to its responsibility.

Let us deal with the question of retroactivity. If we open the door for retroactive spills, my colleagues can envision a number of other requests. I know there is at least one other amendment being prepared to submit if this amendment carries. If this amendment carries that amendment will be offered and it will be difficult then to deny that amendment.

If that occurs I am sure a number of Members would also have similar amendments to deal with some local spills. If I understand correctly, the gentleman from Massachusetts (Mr. Studds) in a discussion I had with him, was thinking of offering an amendment that would include the spill of the *Argo Merchant*, and then the thing becomes one beyond reasonable acceptance.

I know the point the gentleman might argue, that it only happened a year ago. Some argue it happened 3 months ago. I would like to offer the gentleman an analogy. We had a survivors' benefit bill enacted in this Congress, and a proper one, that would provide for the survivors of policemen and firemen who were killed in the line of duty. It passed and has done great good in its implementation.

However, I have received a number of requests from the survivors' widows who came tearfully to my office and said that their husbands died in the line of duty 1 day, 2 days, 3 days before the line of demarcation, before the enactment of the legislation. It is pitiful. It is sad. But a line of demarcation had to be made.

To apply this retroactively or to make the fund liable retroactively is to jeopardize the fund.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent Mr. Biaggi was allowed to proceed for 2 additional minutes.)

Mr. BIAGGI. Assume even further that this bill, or the claims the gentleman from Texas would like to have the superfund respond to were successful, we would now be looking at a fund that has absolutely no money in it.

I would suggest very strongly that this amendment be defeated. I repeat: I feel bad about taking the position I take, but we are talking about a concept that we have labored with in this Congress and in this committee for almost 6 years, a concept that finally appears to be coming to fruition, a concept and legislation that should not be diminished or threatened. I suggest very strongly that the acceptance of this amendment would threaten the existence, or at least the possibility of enacting this legislation. If it were to be accepted, it would threaten the practical application of the provisions of H.R. 85.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. Wyatt).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WYATT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Twenty-two Members are present, an insufficient number. A quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The Chair announces this is a regular quorum call followed by a 5-minute vote.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 569]

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Beilenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Bonker
Bouquard
Bowen

Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chisholm
Clausen
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Deckard
Dellums
Derrick
Derwinski
Devine
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Eptel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Fish
Fisher
Flippo
Florio
Forsythe
Fountain
Fowler
Frenzel
Frost
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Green
Grisham
Guarini
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hawkins
Hightower
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kastenmeier
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCormack
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder

Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Vander Jagt
Vanik
Walgren
Walker
Watkins
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wirth
Wolff
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

☐ 1400

The Chairman. Two hundred eighty-eight Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The Chairman. The pending business is the demand of the gentleman from Texas (Mr. Wyatt) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 43, noes 264, not voting 125, as follows:

[Roll No. 570]

AYES—43

Archer
Bailey
Boggs
Breaux
Brinkley
Byron
Collings, Tex.
Deckard
Donnelly
Dougherty
Eckhardt
Fazio
Frost
Gonzalez
Gramm
Musto
Hall, Ohio
Hance
Hightower
Jones, Okla.
Kazen
LaFalce
Leath, Tex.
Leland
Livingston
Loeffler
Long, La.
Long, Md.
Lowry
Maguire
Murtha
Paul
Pickle
Sensenbrenner
Stenholm
Stump
Swift
Tauzin
Watkins
White
Wilson, Tex.
Wirth
Wyatt

NOES—264

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Bolling
Bonker

Bouquard
Bowen
Brademas
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Campbell
Carney
Carr
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Dellums
Derrick
Derwinski
Devine
Dicks
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Gaydos
Gephardt
Giamo
Gilman
Ginn
Glickman
Goldwater
Gore
Gradison
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Harris
Hawkins
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnston, Calif.
Jones, Tenn.
Kastenmeier
Kelly
Kildee
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Lee
Lehman
Levitas
Lewis
Lott
Lujan
Lundine
Lungren
McCloskey
McCormack
McDonald
McHugh
McKay
McKinney
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Myers, Ind.
Natcher
Neal
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Porter
Preyer
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snyder

Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stark
Stewart
Stokes
Stratton
Studds
Synar
Tauke
Taylor
Thompson
Traxler
Trible
Udall
Vander Jagt
Vanik
Walgren
Walker
Waxman
Weaver
Weiss
Whitehurst
Whittaker
Williams, Mont.
Winn
Wolf
Wolpe
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki

NOT VOTING—125

Abdnor
Addabbo
Alexander
Anderson, Ill.
Andrews, N.C.
Anthony
Applegate
Barnard
Beard, Tenn.
Bethune
Boland
Boner
Bonior
Brooks
Brown, Ohio
Carter
Cavanaugh
Chappell
Cheney
Cleveland
Corman
Cotter
Crane, Philip
Daschie
Davis, Mich.
Davis, S.C.
de la Garza
Dickinson
Dingell
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Fascell
Findley
Ford, Tenn.
Fuqua
Garcia
Gibbons
Gingrich
Gooding
Grassley
Gray
Hanley
Hansen
Harkin
Harsha
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Huckaby
Hutto
Ireland
Jenrette
Johnson, Colo.
Jones, N.C.
Kemp
Kindness
Leach, La
Lederer
Lent
Lloyd
Luken
McClory
McDade
McEwen
Mathias
Mattox
Mavroules
Mazzoli
Mica
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Pashayan
Pepper
Pritchard
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Skelton
Snowe
St Germain
Stanton
Steed
Stockman
Symms
Thomas
Ullman
Van Deerlin
Vento
Volkmer
Wampler
Whitley
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C.H.
Wright
Wydler
Yates
Young, Mo.
Zeferetti

☐ 1410

Mr. Tauzin changed his vote from "no" to "aye."

The result of the vote was announced as above recorded.

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The remainder of the bill reads as follows:

TITLE II—EFFECTIVE DATES; SAVING PROVISIONS; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, That the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made.

(3) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment of taxes under section 541(d)(1)(A) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Clause A of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsection (l) is further amended by striking out "subsections (c) and (i)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(1) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 203. No part of any moneys in the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 204. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE III—HAZARDOUS SUBSTANCE LIABILITY, COMPENSATION, AND FUND

HAZARDOUS SUBSTANCE LIABILITY

SEC. 301. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"(19) 'supplier' means, with respect to subsection (k) of this section, any person who produces, manufactures, or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture, or importation, or a site that adjoins, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture, or importation.

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (l) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(b) Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

"(2) A claim authorized by paragraph (1) may be asserted.—

(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): *Provided further,* That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under item (B) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (C) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided,* That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (D) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under items (B) through (D) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(F) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (F) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damagess authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2), (3), (4) and (5), the owner and operator of a vessel other than a public vessel, or a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum or $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he detemines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(i)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k) There is in the Treasury of the United States a fund known as the Hazardous Substance Pollution Liability Trust Fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

SEC. 302. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss, which is a compensable damage under title V of the Comprehensive Oil and Hazardous Substances, Pollution Liability and Compensation Act, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k) under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k) under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court, against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recovered under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the fund shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

SEC. 303. Nothing in this Act or the amendments made by this Act shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 304. This title and the amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE IV

SEC. 401. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of titles I through IV of this Act or of any amendment made by titles I through IV of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the   dealing with the matter of   , which rule or regulation was transmitted to Congress on   .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE: AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE. Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SUBTITLE A—IMPOSITION OF TAXES

SEC. 511. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definitions and special rules.

"SEC. 4601. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a), then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPOSED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) In general.—The term United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) United States includes continental shelf areas.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) United States includes foreign trade zones.—The term 'United States' includes any foreign trade zone of the United States.

"(5) United states refinery.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) Refineries which produce natural gasoline.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) Premises.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) Barrel.—The term 'barrel' means 42 United States gallons.

"(9) Fractional part of barrel.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) Only One Tax With Respect to Any Product.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Se. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX

"(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) Termination.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions.—For purposes of this subchapter—

"(1) Taxable chemical.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) Specified petrochemical feedstock.—

"(A) In general.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene, butylene; butadiene; butane; propane; benzene; toluene; xylene; naphthalene; methane; carbon black; ethane.

"(B) Special rule for certain substances.—Under regulations prescribed by the Secretary, any substances listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

"(3) Specified inorganic substance.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) **United States.** The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) **Importer.**—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) **Ton.**—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) **Fractional part of ton.**—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) **Use by Manufacturer, Etc., Considered Sale.**—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) **Refund or Credit for Certain Uses.** Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) **Clerical Amendment.**—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38, ENVIRONMENTAL TAXES.".

(c) **Effective Date.**—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

Part I—Establishment of Trust Funds

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) **Creation of Trust Fund.**—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) **Transfer to Oil Pollution Trust Fund of Certain Amounts.**—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954.

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) **Expenditures From Oil Pollution Trust Fund.**—

(1) **In general.**—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) **Claims include certain expenses.**—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

SEC. 522. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) **Creation of Trust Fund.**—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability

Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) Transfer to Hazardous Substance Trust Fund of Certain Amounts.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954.

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) Expenditures From Hazardous Substance Trust Fund—

(1) In general.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) Claims include certain expenses.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

Part II—General Provisions Applicable To Trust Fund

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) Definition of Compensable Damages.—

(1) In general.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) Income requirements.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, such person's gross income from activities which utilize the property or natural resources referred to in paragraph (1)(D), exceeds

(B) 25 percent of his total gross income from all sources for the taxable year (or for the preceding taxable year, as the case may be).

(b) Restriction on Interest Payable Out of Trust Funds—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) Certain Interfund Loans Permitted.—

(1) In general.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) Appropriate federal official—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) Amount in trust fund.—For purposes of this subsection and section 532(a), the amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) General Rule.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the amount in such Fund to an amount less than $30,000,000.

(b) Order in Which Unpaid Claims Are To Be Paid.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) General Rule.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subtitle.

(b) Borrowing From General Fund of Treasury.—

(1) Prohibition.—Except as provided in paragraph (2), nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

(2) First year authority.—

(A) In general.—There are authorized to be appropriated to each Trust Fund established by this subtitle, as repayable advances, such sums as may be necessary to carry out the purpose of such Fund.

(B) Limitations.—

(i) The maximum aggregate amount which may be appropriated pursuant to subparagraph (A) to any Trust Fund may not exceed $75,000,000.

(ii) No advance may be made under this paragraph after September 30, 1981.

(C) Repayment of advances.—Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in section 534(b)(2) and shall be compounded annually.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) Method of Transfer.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) Management of Trust Funds.—

(1) Report.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) Investment.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The

income on such investments shall be credited to and form a part of the Trust Fund.

SUBTITLE C—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title,

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of such titles) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus"means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Trust Fund established by this title, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution.

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that all debate on the bill and all amendments thereto conclude at 2:40 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The CHAIRMAN. Members standing at the time the unanimous-consent request was agreed to will be recognized for 1 minute each.

The Chair recognizes the gentleman from New York (Mr. Biaggi).

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment [Sec. 304].

The Clerk read as follows:

Amendment offered by Mr. BIAGGI: On page 39, line 15, add "In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.".

On page 40, line 1, strike "fees waived," and substitute "the advance tax payment credited under title V of this Act.".

On page 40, strike line 12 and substitute "The fund referred to in section 311(k) of the".

On page 41, line 4, strike "Clause A" and substitute "Subparagraph (A)".

On page 41, line 13, strike "Clause B" and substitute "Subparagraph (B)".

On page 41, line 18, strike "Clause" and substitute "Subparagraph".

On page 42, line 2, strike "established under" and substitute "referred to in".

On page 42, line 7, strike "established under" and substitute "referred to in".

Mr. BIAGGI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BIAGGI. Mr. Chairman, these amendments are technical and conforming. They correct errors and omissions in title II of the bill. The amendment to page 39 of the bill merely returns to the bill language that was erroneously removed in the process of drafting the Breaux substitute. It is language that was in the bill as reported by the Merchant Marine and Public Works Committees.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, these are the amendments the committee and the staffs have been over, and we are in agreement with them in all committees, so far as I know.

Mr. Biaggi. I thank the gentleman.

The Chairman. The question is on the amendment offered by the gentleman from New York (Mr. Biaggi).

The amendment was agreed to.

The Chairman. The Chair recognizes the gentleman from Alaska (Mr. Young).

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. Young of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Young of Alaska: Page 40, after line 4, insert the following:
>
> "(4) The amount of any TAP fund surplus not used as an advance payment under section 541(d) shall be rebated by the Secretary directly to the operator of the Trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel."

Mr. Young of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. Young of Alaska. This amendment addresses the equitable disposition of money transferred to the H.R. 85 trust fund from the trans-Alaska pollution liability fund if the 1985 sunset provision regarding taxes takes effect [**Sec. 211**]. As provided in the Breaux substitute, the TAPS fund surplus transferred to the oil pollution liability trust fund under section 202(b) is to be treated as an advance payment of the tax on oil imposed by H.R. 85.

The TAPS fund is a corporation created by act of Congress and administered by the holders of the trans-Alaska pipeline right-of-way, subject to the regulations promulgated by the Secretary of the Interior. Thus, unlike other funds, the TAPS fund is not part of the U.S. treasury. Therefore, if the balance of the TAPS fund is transferred to the oil pollution liability trust fund, this would not merely be the transfer of money within the Treasury but rather the taking of property of a privately funded corporation and placing that property in the Treasury of the United States. The granting of credit for an advance payment may offset this situation. Nevertheless, it would be inequitable to require the owners of oil shipped through the trans-Alaska pipeline to contribute disproportionately to the oil pollution liability trust fund.

However, this is exactly what may happen should the 1985 sunset provision regarding taxes come into effect. The amount of funds available from the TAPS fund to be transferred to the H.R. 85 fund could approximate nearly $70 million. However, the amount of taxes paid by owners of oil shipped through the trans-Alaska pipeline may not equal that amount by 1985. Therefore, if the sunset provision goes into effect, the owners of oil shipped through the trans-Alaska pipeline would not be able to receive the benefit of an advance payment credit of the taxes on oil as contemplated by H.R. 85. This amendment would return that portion of the TAPS fund surplus not used as an advance payment directly to the owners of the oil shipped through the trans-Alaska pipeline on a pro rata basis. This then would afford these owners equitable treatment under H.R. 85.

Mr. Chairman, I note that if the sunset provision is extended beyond 1985, then the provision in this amendment would not go into effect because it is based on the termination of the ability to use the TAPS fund surplus as an advance payment. Once the owners of oil shipped through the trans-Alaska pipeline have received the full amount of the advance payment credit afforded by this legislation, then this provision would no longer apply.

Mr. Chairman, I urge adoption of this amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, as I understand it, the purpose of the amendment is to direct the Secretary to rebate any Trans-Alaska Pipeline Authorization Act surplus not used as an advance payment under section 541(d) directly to the operator of the Trans-Alaska Oil Pipeline, for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel. We have no objection.

Mr. YOUNG of Alaska. I thank the gentleman.

Mr. BIAGGI. Mr. Chairman, if the gentleman will yield, we have no objection to the amendment.

Mr. YOUNG of Alaska. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska (Mr. Young).

The amendment was agreed to.

The Chair recognizes the gentleman from Louisiana (Mr. Breaux).

AMENDMENTS OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Chairman, I offer a series of amendments, which consist of technical and conforming changes to title III of the bill. I ask unanimous consent that they be considered en bloc. **[Secs. 108(d) and 111]**.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Breaux:

Page 72, after line 8, insert the following:

(c) Paragraph (3) of subsection (p) of section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new sentence: "The total liability under this section of any guarantor shall be limited to the aggregate amount which such guarantor has provided as evidence of financial responsibility under this section, except that nothing in this sentence shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.".

Page 47, after line 16, insert the following:

(3) Paragraph (5) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out "the Canal Zone,".

Page 45, strike out lines 8 through 19 inclusive and insert in lieu thereof the following:

"(19) 'ship' means either of the following types of vessels carrying oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance in bulk as cargo or in residue:

"(A) a self-propelled vessel, or

"(B) a non-self-propelled vessel other than an inland oil barge;

Page 48, line 1, after "substances" insert "in violation of subsection (b)(3) of this section".

Page 48, line 13, insert the following:

In any case where the discharge of a hazardous substance is not in violation of (b)(3) of this section all removal costs for such discharge shall be paid from the fund referred to in subsection (k) of this section and no other person shall be liable for any part of such costs, notwithstanding any other provision of this section to the contrary.

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BREAUX. Mr. Chairman, the first amendment makes it clear that the total liability under the bill of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility **[Sec. 108(d)]**. This is to insure that an insurance company, for example, would not be held liable for more than the face amount of the policy it has issued in accordance with title III. The amendment provides, however, that it shall not be construed to limit the liability of a guarantor when he negotiates, or fails to negotiate, in bad faith the settlement of any claim. This preserves existing law in regard to bad faith negotiations.

The second amendment is a purely technical one. It deletes the reference to the Canal Zone since we no longer exercise jurisdiction over that area.

The third amendment, also technical, includes a definition of "ship" which was inadvertently left out of the bill in title III. It also deletes the definition of "supplier" because the term "supplier" no longer appears in title III.

The fourth amendment retains the existing framework of section 311 of the Federal Water Pollution Control Act **[Sec. 111]**.

Under existing law, discharges of oil or hazardous substances are prohibited only if they are "in such quantities as may be harmful." The Environmental Protection Agency must establish a "harmful quantity" level for each of the hazardous substances. Below that level, there is no duty to notify of a discharge, no civil penalty, and no liability for cleanup costs. EPA or the Coast Guard may still act to clean up a discharge of less than a harmful quantity of a hazardous substance, but the costs they incur in doing so may not be recovered from the discharger.

This amendment is designed to conform H.R. 85 to exactly the same scheme. It provides that none of the claims for damages can be asserted for discharges in less than harmful quantities. As under existing law. Federal agencies can act to clean up spills of any magnitude, but if a spill is of less than a harmful quantity, the costs of the cleanup cannot be recovered from the discharger under this law. This is precisely the same arrangement contained in existing law.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, we have no objection to these conforming amendments.

Mr. BREAUX. I thank the gentleman.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we have been over the amendments and helped in their preparation, and are satisfied with them.

The first two parts of this amendment are virtually identical to those which were offered to title I. **[Sec. 108(d)]**. That is, they: First, limit a guarantor's liability to that which he certifies financial responsibility; and second, delete the Canal Zone from coverage under this act. The amendment clarifies the amount of liability imposed on guarantors under the direct action provisions of H.R. 85, section 105(c). Without the amendment the current liability provisions may preclude insurers and other guarantors from providing the evidence of financial responsibility required by the bill for offshore facilities.

Some feel that there is nothing in the bill that would clearly limit a guarantor's liability to a specific sum; that is, that provided as evidence of financial responsibility. Under section 105(c) of H.R. 85 any claim authorized by section 103(a) may be asserted directly against any guarantor providing the evidence of financial responsibility required. In defending such a claim the statute allows a guarantor only those defenses of the owner and operator for whom the guarantee is provided, and that of his willful negligence, but it specifically excludes defenses and limitation under the terms of a policy or contractual agreement between them.

Since the liabilities of the offshore facility owner or operator for whom the guarantee is provided are $50 million plus removal costs, the committee has been informed that this is considered the practical equivalent of unlimited liability by potential guarantors. Insurers and other guarantors are precluded by law and prudence from insuring unlimited liability.

While it appears that this unlimited liability for guarantors is inadvertent (the bill seems to contemplate limits to the amounts of financial responsibility required to be evidenced by the owner and operator), the language does not clarify any limits of liability for guarantors. The proposed amendment would solve the problem for guarantors by fixing the limits of the guarantor's aggregate liability at amount of evidence of financial responsibility furnished. It creates no other obligations for guarantors, nor does it avoid any obiligations of the guarantor to negotiate in good faith. I would note that the issue of good faith can only be raised by the insuree and not by a third party.

The amendment also adds a new definition to section 311 to define the term "ship" which is not currently a defined term for the purposes of this section. This definition is identical to that contained in title I, and is necessary due to the fact that with the enactment of title III, section 311 will make important distinctions between a vessel, a ship, and an inland oil barge, and "ship" is the only term not currently defined in section 311.

The final part of the amendment, Mr. Chairman, is a provision which clarifies that, in the case where a hazardous substance designated under section 311 is not being discharged in a quantity that may be harmful, EPA will continue to have authority to respond to remove the pollution threat and that funds for the removal effort will come from the fund established by title V. [Sec. 111]. The amendment further clarifies that when a discharge of a designated hazardous substance occurs in a quantity that is less than that which may be harmful, as established by the section 311 regulations, recovery is not permitted under section 311 from a responsible party.

Mr. Chairman, I support these amendments offered by the gentleman from Louisiana and urge my colleagues to do likewise.

Mr. **Breaux**. I thank the gentleman.

The **Chairman**. The question is on the amendments offered by the gentleman from Louisiana (Mr. Breaux).

The amendments were agreed to.

The **Chairman**. The Chair recognizes the gentleman from New York (Mr. **Peyser**).

AMENDMENT OFFERED BY MR. PEYSER

Mr. **Peyser**. Mr. Chairman, I offer an amendment [Sec. 111].

The Clerk read as follows:

Amendment offered by Mr. Peyser: Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (e) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $10,000,000 shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph.

Mr. **Peyser** (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the **Record**.

The **Chairman**. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. Peyser asked and was given permission to revise and extend his remarks.)

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Mr. **Peyser**. Mr. Chairman, first of all, I want to thank the gentlewoman from New York (Ms. Ferraro), a member of the Committee on Public Works and Transportation, for her work on this amendment, and as well my thanks go to the subcommittee chairman and the ranking minority member on both sides who have helped.

My amendment provides funding for the first time for cleanup of "in place" toxic pollutants deposited in our navigable waterways. As most of you are aware, the superfund bill as it is now structured only allows for cleanup of hazardous substance spills and discharges occurring in the future. My amendment would allow the fund to also be used for cleanup of those toxic pollutants which have already been discharged and are now imbedded in the sediments of our harbors and waterways.

This sedimentary pollution is an extremely serious and chronic problem which has plagued our Nation's waterways for many years and one which superfund should address if it is to be a comprehensive and effective bill. To cite a few examples: there are numerous waterways and harbors in the Great Lakes region which are infested with high levels of PCB's and other toxic chemicals.

In my own State of New York, there are a number of highly concentrated PCB deposits called hot spots on the Hudson River which leach out and flow downstream polluting the New York Harbor and upper Hudson River. Because of this pollution, EPA recently threatened to stop all dredging activities in and near the harbor and upstream and thus to ultimately close the harbor. Many businesses in my own district, not to mention the entire New York Port area, are threatened by such actions. This situation is crying out for a solution and needs to be addressed as quickly as possible. There are many other examples, including Waukegan Harbor and other areas in the Great Lakes region, the Tennessee River in Alabama, the Baltimore Harbor, the James River in Virginia, and the Housatonic River in Connecticut. These all need to be dealt with, and unless my amendment is approved, they may never be addressed.

I would like to point out to my colleagues that my amendment has the support of the major environmental groups including the National Wildlife Federation, the Sierra Club, Natural Resources Defense Council, and the Environmental Defense fund. It also has the support of the American Association of Port Authorities whose members are so adversely affected by the problem of sedimentary pollution. This amendment is crucial to the survival of our ports and waterways and I urge my colleagues to support it.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I am glad to yield to the gentleman from Texas.

Mr. ROBERTS. Mr. Chairman, as far as the Committee on Public Works and Transportation is concerned, this was in the original bill, and the gentlewoman from New York (Ms. Ferraro) was one of the authors. This amendment is perfectly in order, and I have no objection to it.

Ms. FERRARO. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentlewoman from New York.

(Ms. Ferraro asked and was given permission to revise and extend her remarks.)

Ms. FERRARO. Mr. Chairman, this amendment has the effect of restoring to the bill language covering a kind of pollution that was included in the Public Works Committee version of the bill. By doing so, it helps complete the consolidation of Federal hazardous waste cleanup efforts in one piece of legislation.

As currently written, the Federal Water Pollution Control Act contains several different sections which address the problem of cleaning up hazardous substances in our Nation's waterways. Section 311 establishes a revolving fund to be used for three purposes: removal costs of hazardous substances; injury to, or destruction of, either real or personal property or natural resources; or the loss of profits due to destruction of property. Section 115 provides specifically for the cleanup of in-place toxicants.

The problem is that Congress never clarified exactly what types of situations the revolving fund in section 311 could be used to clean up. EPA interpreted the act to mean that section 311 could only be used to clean up pollutants discharged after the date of enactment of the Clean Water Act and held that a separate appropriation under section 115 would be needed for the cleanup of inplace toxicants.

One of the reasons EPA sought to maintain this distinction was the potentially staggering cost of cleaning up all the in-place toxicants in our Nation's navigable waterways. While nobody has hard information on the exact extent of this problem, it is generally believed to be massive.

The amendment before us meets this objection by placing a limitation of $10 million on the amount of money that can be used out of the "superfund" for the removal of in-place toxicants. In addition, any cleanup of in-place toxicants must be approved in advance by the EPA Administrator. So these are ample safeguards against any possible depletion of the fund.

The argument that the section 311 revolving fund is not intended to cover removal of in-place toxicants goes straight to the heart of the purpose of superfund. What superfund is all about is bringing all Federal hazardous substance cleanup efforts under one roof. A truly comprehensive program to clean up hazardous substances from our Nation's waterways must provide for removal of in-place pollutants as well as pollutants discharged in the future.

There are numerous examples, all over the country, of major waterways that are infested with dangerous levels of hazardous substances. While the original discharge of these substances may have occurred in the past, the damage to the environment and the threat to human health continue. Many parts of the Great Lakes are infested with PCB's and other toxic pollutants. The James River in Virginia contains dangerous levels of Kepone. A tributary of the Tennessee River near Huntsville, Ala., has been polluted by the discharge of 1,000 tons of DDT.

The case with which I am most familar is the pollution of the Hudson River with PCB's. New York State's Department of Environmental Conservation estimates that there are some 630,000 pounds of PCB's in the bottom sediments of the Hudson River over a 190-mile stretch of the river north of New York City. As a result of these deposits, all fishing has been banned in the upper Hudson, and more than 60 percent of commercial fisheries in the lower Hudson have been closed.

In addition, some 5,000 pounds of PCB's are washed down the Hudson into New York Harbor each year. The resulting pollution has created problems for the Port of New York in dredging the harbor to keep it deep enough to accommodate the passenger and container ships that berth at the harbor. Earlier this year, last-minute negotiations were needed between EPA and the Port Authority of New York and New Jersey to avoid the cancellation of the scheduled berthing of the *Queen Elizabeth II* in early April. By cleaning up the "hotspots" in the upper Hudson, we can reduce the cost of the cleanup, the extent of the environmental damage, and the problem of disposing of the dredged materials. Under the existing system, the solution for New York Harbor was to dump the dredged materials in the ocean, which simply amounts to transferring the poison.

As I have said, the purpose of superfund is to consolidated Federal efforts to clean up hazardous wastes. The kinds of situations covered by this amendment are a critical part of that effort. I urge all my colleagues to join me in supporting this amendment.

● Mr. **Yates**. Mr. Chairman, I rise in strong support of the amendment offered by my colleague from New York (Mr. Peyser) and I commend the gentleman for his initiative.

The Peyser amendment would allow for cleanup of toxic pollutants which are already "in place" in navigable waterways. A host of contaminants—PCB's, kepone, mercury, and other very hazardous substances—already pose a clear and present danger in waterways throughout the Nation. Just north of Chicago, for example, Waukegan Harbor contains the largest concentration of PCB's ever found, and the dangers of PCB's are well-documented. These substances must be removed as quickly as possible. Indeed, it is the knowledge of these hazards that contributes to the sense of urgency which has helped build the consensus behind the need for a "superfund." It would be illogical and imprudent to exclude these known hazards from the proposed remedy.

I might add, Mr. Speaker, that, if the Peyser amendment does not pass, we are simply delaying the problem. These hazards—the kepone, the mercury, the PCB's—must be cleaned up. If we do not act now to insure that we address these problems in an orderly, comprehensive fashion, we are insuring that we will confront them later—most probably, in the same chaotic, inadequate, ad hoc manner with which we have tried to deal with them in the past. Now is the time to put in place a workable, feasible, rational plan for cleaning up toxic pollutants in our navigable waterways. H.R. 85 does that—and the Peyser amendment helps. I urge its passage.●

Mr. **Breaux**. Mr. Chairman, will the gentleman yield?

Mr. **Peyser**. I yield to the gentleman from Louisiana.

Mr. **Breaux**. Mr. Chairman, I would like to ask the gentleman a few questions about this, because this is a rather substantive amendment.

The **Chairman**. The time of the gentleman from New York (Mr. Peyser) has expired.

AMENDMENT OFFERED BY MR. SOLOMON TO THE AMENDMENT OFFERED BY MR. PEYSER

Mr. **Solomon**. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Solomon to the amendment offered by Mr. Peyser: At the end of the matter proposed to be inserted, add the following: "No pollutants removed pursuant to this paragraph shall be placed in any landfill unless the Administrator first determines that disposal of the pollutants in such landfill would provide a higher standard of protection of the public health, safety, and welfare than disposal of such pollutants by any other method including, but not limited to, incineration or a chemical destruction process.".

(Mr. Solomon asked and was given permission to revise and extend his remarks.)

Mr. **Solomon**. Mr. Chairman, my colleague from New York's amendment will enable the cleanup of PCB's from approximately 30 miles of the Hudson River adjoining my congressional district. However, I am concerned that EPA in carrying out this amendment will not use the best disposal method available. Nothing in the gentleman's amendment, nor any other provision of the bill, requires that EPA either incinerate or use a new technology which strips the chlorine molecules from the PCB's—turning them into harmless salt and other residual products. This technology has recently been advanced by the Goodyear Corp. and Sun Oil, respectively.

Therefore, Mr. Chairman, my amendment requires EPA to exhaust these options before they select a landfill option. The reason for my amendment is simple. Encapsulating these PCB materials does not necessarily mean that the problem will be solved. We may find instead that down the road the landfill presents a threat to human health or welfare for one reason or another. I think I need only to point to a recent "60 Minutes" show on the cleanup of the nuclear waste in the Pacific (Eniwetok and Bikini Islands) wherein the U.S. Army went in and collected all the nuclear contaminated material and deposited it in a deep concrete disposal facility. Yet, less than 2 years later we find that facility is leaking. This clearly demonstrates that we cannot say with certainty that encapsulation provides the environmental solution to a problem. That is why I offer my amendment and I hope my colleagues can support it.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the ranking minority member.

(Mr. Snyder asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, on behalf of the minority I am prepared to accept the amendment. As I understand it, a new process has been developed for destroying the PCB's or at least reducing these highly toxic substances to environmentally safe compounds. This certainly seems preferable to disposing these materials in landfills.

I think the gentleman's amendment improves the legislation and assures that the public interest will be protected—by a Republican amendment. I hope our colleague, who felt that only his party was interested in the public interest, is listening.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Solomon) to the amendment offered by the gentleman from New York (Mr. Peyser).

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Peyser), as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. LIVINGSTON

Mr. LIVINGSTON. Mr. Chairman, I offer an amendment [Sec. 111].

The Clerk read as follows:

Amendment offered by Mr. LIVINGSTON: Page 72, after line 16, insert the following:

SEC. 305. Notwithstanding section 311(f)(1) of the Federal Water Pollution Control Act; this title and the amendments made by this title shall be applicable to claims for removal costs and economic loss incurred as a result of the discharge of pentachlorophenol into the Mississippi River Gulf outlet on July 22, 1980, in the same manner and to the same extent as this title and the amendments made by this title apply to claims to removal costs and claims for economic loss incurred after the effective date of this title.

Mr. Livingston (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

(Mr. Livingston asked and was given permission to revise and extend his remarks.)

Mr. Livingston. Mr. Chairman, title III, as members are now aware, addresses the release of hazardous substances into navigable waterways. The Public Works Committee which has jurisdiction reported its version of H.R. 85 to the House on May 16, 1980, over 4 months ago.

Since that time a terrible chemical spill has occured in southern Louisiana when two vessels, a West German container ship and a Panamanian freighter, collided on July 22 in the Mississippi River Gulf Outlet. The accident released over 12 tons of the highly toxic herbicide pentachlorophenol into the waterway and surrounding bays and estuaries.

The Mississippi River Gulf Outlet was immediately closed to all transportation, virtually paralyzing a major section of the Port of New Orleans by closing its second busiest vessel route. Furthermore, seven days later, at the height of the brown shrimp season, health authorities closed over 400 square miles of water to all fishing.

For four weeks the port was helpless as vessels destined for New Orleans through the Mississippi River Gulf Outlet were rerouted to Houston and Mobile, causing a trade loss of $1.6 million. Similarly, fishermen unable to use the productive fisheries in the closed area lost an estimated $2.4 million.

The PCP spill was a classic example of environmental pollution from the release of a hazardous chemical in a navigable waterway, the very type of case intended to be addressed by the provisions of title III. My amendment, therefore, actually is a technical matter making the provisions of title III applicable to claims for removal costs and economic loss as a result of the spill.

Approval of my amendment merely makes PCP claims eligible under the provisions of the bill, allowing businesses and persons tragically harmed by PCP the opportunity for compensation. Had this bill been passed 3 months ago, this incident would have been covered under this bill.

However, I understand that this is basically the same situation as that which transpired before this body a few minutes ago when the Campeche spill was discussed.

At this time I would offer my amendment, but I would also ask the chairman of the Subcommittee on Water Resources this question: Is this not basically the same kind of incident which was intended to be covered by this particular bill?

Mr. Roberts. Mr. Chairman, if the gentleman will yield, the gentleman is correct. It is retroactive and accomplishes the same thing. It should be the subject of a separate bill and should receive special consideration.

Mr. **Livingston**. Mr. Chairman, would the gentleman entertain the possibility of hearings at a later date on this important matter so it might be covered in a separate bill sometime down the line?

Mr. **Roberts**. Mr. Chairman, in the short period I am going to be here, I cannot guarantee the gentleman that I will have time to do it, but it will be done. I am sure that will be done later.

Mrs. **Boggs**. Mr. Chairman, will the gentleman yield?

Mr. **Livingston**. I am delighted to yield to the gentlewoman from Louisiana.

Mrs. **Boggs**. Mr. Chairman, I would like to associate my remarks with those of my colleague, the gentleman from Louisiana (Mr. Livingston).

I am very pleased that the gentleman has entered into a colloquy with the subcommittee chairman, and certainly I will be supportive of his efforts to have a separate bill on this if we are unable to have this matter covered today. This is a problem that has brought us much difficulty.

Mr. **Livingston**. I thank the gentlelady from Louisiana (Mrs. Boggs).

The **Chairman**. The question is on the amendment offered by the gentleman from Louisiana (Mr. Livingston).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. **Snyder**. Mr. Chairman, on that I ask for a division.

The **Chairman**. Does the Chair understand that the gentleman asks for a division?

Mr. **Snyder**. Mr. Chairman, I understood the gentleman was going to withdraw the amendment, and he did not.

The **Chairman**. Does the gentleman from Kentucky (Mr. Snyder) insist on a division?

PARLIAMENTARY INQUIRY

Mr. **Snyder**. Mr. Chairman, a parliamentary inquiry.

The **Chairman**. The gentleman will state it.

Mr. **Snyder**. Mr. Chairman, was the amendment withdrawn?

The **Chairman**. The amendment was not withdrawn.

Mr. **Snyder**. Mr. Chairman, did the Chair announce that the amendment carried?

The **Chairman**. The Chair announced that by voice vote the amendment was agreed to.

Mr. **Snyder**. Then, Mr. Chairman, I demand a division.

On a division (demanded by Mr. Snyder) there were—ayes 4, noes 30.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BREAUX

Mr. **Breaux**. Mr. Chairman, I offer an amendment **[Sec. 107(i)]**.

The Clerk read as follows:

Amendment offered by Mr. Breaux: Page 72, after line 13, insert the following new section:

Sec. 304. Nothing in this title and nothing in the amendments made by this title, other than the application of these provisions to removal costs, shall be applicable to the use or the supervision of use of any pesticide (including one classified for restricted use) by any person who is a private applicator within the meaning of section 2(e)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. Except in the case of removal costs, the use of pesticides by any such person shall be subject to section 311 of the Federal Water Pollution Control Act as in effect prior to the effective date of this title. Any person having a claim for damages for economic loss incurred on or after the effective date of this title as the result of the use or supervision of use of a pesticide by such a private applicator shall assert such claim in accordance with the provisions of this title and the amendments made by this title except that the Hazardous Substance Pollution Liability Trust Fund shall be the sole source liable for the payment of such claim.

Renumber the succeeding section accordingly.

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BREAUX. Mr. Chairman, this amendment was brought to our attention by the chairman of the Committee on Agriculture, the gentleman from Washington, (Mr. Foley).

The amendment merely provides that farmers who apply chemicals on their own property would come under existing laws as far as damage claims against the farmer are concerned, but the fund could be used to pay for removal costs.

Commercial applicators under this amendment would be totally subject to the provisions of this legislation, however, and claims by persons against farmers could be made. They could bring their claim against the farmer personally but not against the fund.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, as I understand this amendment, it is meant to produce the following consequences:

When a farmer uses pesticides on his crops:

First. Anyone suffering any of the four categories of compensable damages covered under the bill can be compensated by the trust fund;

Second. The trust fund may go against the farmer to recover only removal costs;

Third. The trust fund cannot go against the farmer for any other types of compensable damages;

Fourth. In evaluating the farmer's liability for removal costs, H.R. 85 provides the standard to be used; and

Fifth. Where State, local, or other Federal causes of actions exist for types of damages not compensable under this bill, those causes of action are not preempted and claims for them may be brought in the appropriate State, or other, courts.

Mr. BREAUX. Mr. Chairman, the gentleman is correct in what he has stated.

Mr. SNYDER. It is with this understanding that I support the amendment.

The CHAIRMAN. The time of the gentleman from Louisiana (Mr. Breaux) has expired.

The Chair will inquire, does the gentleman from Kentucky (Mr. Snyder) desire to use his time at this time?

Mr. SNYDER. No, I do not, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. Breaux).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 25, noes 3.

So the amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. Studds).

Mr. STUDDS. Mr. Chairman, because of the lateness of the time and the complexity of the statute before us, I will not offer the amendments which I had planned to introduce.

I would like to take this moment, if I may, to remind the Members that the statutory complexity of this measure notwithstanding, its intent and its thrust are simple. It both provides a method by which those damaged by spills can be promptly and equitably compensated, and it provides an incentive for those who carry oil to take the minimal amount of precaution necessary to avoid a spill.

Our current laws are full of loopholes large enough to sail a Liberian tanker through, and this problem at long last will be solved by this bill.

Mr. Chairman, I urge the Members to support the bill strongly and unanimously.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. Bauman).

(Mr. BAUMAN was given permission to revise and extend his remarks.)

Mr. BAUMAN. Mr. Chairman, as a member of the Committee on Merchant Marine and Fisheries and a cosponsor of the bill, I rise in support of this legislation.

Mr. Chairman, as we come to the close of the consideration of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act, I would like to commend the members of the Committee on Merchant Marine and Fisheries, including Mr. Breaux, Mr. Studds, and Mr. Biaggi, who have worked so hard to bring this legislation to fruition. As a cosponsor of this and similar bills over the last several years it has been a continuing frustration to me to see this important legislation delayed.

As one who has the honor to represent the Eastern Shore of Maryland and a large part of the western shore of the Cheasapeake Bay, as well as the Potomac River, I am acutely aware of the continuing problem presented by oil and chemical spills in the waters of Maryland and Virginia.

The State of Maryland has on its statutes a comprehensive oil-spill law which I understand will be protected by this new legislation in many respects. One of my concerns was that a Federal law would preempt our State statute, making it impossible for the State to act on its own. This problem has been addressed in the bill.

Mr. Chairman, H.R. 85 will present a comprehensive system of liability and compensation for oilspill damage and removal and will also act as a strong incentive for shippers and oil handlers to take the necessary steps to avoid the accidents that pollute our waters.

For the watermen, boaters, shoreline residents, and others in Maryland, this should serve as both a protection and means of preserving our bay and rivers which is so important to us.

I urge passage of the bill.

Mr. Evans of Delaware. Mr. Chairman, I rise in strong support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as modified by the Breaux substitute.

As a member of the Subcommittee on Coast Guard and Navigation, my primary interest in H.R. 85 has concerned oil spills. In this Congress I was one of the original cosponsors of H.R. 85, as an oil spill bill, just as I was a cosponsor of the oil spill bill the House passed in the 95th Congress.

As a representative of a coastal State, I have been greatly distressed that the House has twice passed an oil spill bill, only to have the Senate fail to respond with passage of a similar measure. Each new incident, such as the 1979 blowout of the Mexican-owned exploratory well in the Bay of Campeche, reminds us of the urgency of getting a liability and compensation system in place.

Catastrophic oil spills always happen somewhere else, if you are lucky, but never at home. But believe me, the people of Delaware are acutely aware that it can happen at home. Some 70 percent of the crude oil delivered to the east coast travels up the Delaware Bay and River to refineries in Delaware, Pennsylvania, and New Jersey. Delawareans, as well as the millions of others who flock to enjoy our clean beaches, sit on the shore and watch these tankers enter the bay and anchor off Big Stone Beach where lightering operations transfer the crude oil to barges for transport farther upriver.

In spite of the best efforts of the oil companies, the shipping lines, and others, these behemoths are accidents waiting to happen on some icy, foggy winter day. I hope and pray that day never comes in Delaware Bay, but if and when it does, I hope this bill is law, because the people of Delaware who rely on our precious coast for their livelihoods must have something to fall back on. It is only fair that they clearly know who to turn to for help, who is responsible for the damages, and how long it will take to recover their lost income. This bill will go a long way toward taking care of these problems.

When I cosponsored H.R. 85 in 1979, it addressed only the problem of oilspills. Now, because of the contribution of the Committee on Public Works and Transportation, it also addresses the matter of spills of hazardous chemicals in navigable waters and adjacent areas. I think this is most appropriate, and I fully support the contribution of the Public Works Committee as it is now embodied in the Breaux substitute.

At this time last year we had an incident at Sharptown, Md., near the Delaware-Maryland line on the Nanticoke River, which dramatically underscored in my mind the need for legislation addressing spills of hazardous chemicals. At Sharptown, located within 25 feet of the Nanticoke River and within a few blocks of hundreds of people, they suddenly discovered that what were thought to be empty storage tanks actually contained tens of thousands of gallons of hazardous chemicals, including some 9,000 gallons of cancer-causing PCB's. What followed this discovery were weeks of misinformation, confusion, charges, and countercharges while different Federal and State agencies were trying to decide who was going to do and pay for what. While all the agencies bickered, the townspeople quivered in their sleep, hoping that the tanks did not spill their guts into the town and river.

Ultimately, the Coast Guard decided that there was an "imminent threat" to navigable waters and the hazardous substances were removed to a safer storage area at a reported cost of half a million dollars to the Government. What would have happened if the tanks had not held until the Government could get its act together? Who would have protected the citizens and the river? Who would have paid the cleanup costs and compensated the innocent victims of Sharptown, Md., especially in the event that a financially responsible owner could not be located? The answer is that the people from Sharptown would still be reeling from that incident, with no end of their problems in sight.

Critics of H.R. 85 contend that it is not needed because existing laws such as section 311 of the Clean Water Act give the Federal Government adequate authority to respond to spills of oil and hazardous chemicals. But the fact of the matter is that the law pertaining to oil or chemical spills is severely fragmented among the Clean Water Act, the Outer Continental Shelf Lands Act, the Deepwater Ports Act, and other Federal laws, to say nothing of State, common, and maritime laws. One of the major shortcomings of existing law, and specifically section 311 of the Clean Water Act, is that the $35,000,000 revolving fund can only be used to clean up oil and chemical spills in navigable waters and adjacent areas. It cannot be used to compensate the innocent victims of these spills.

Compensation of the innocent victims of chemical or oil spills is absolutely crucial. That person who derives a livelihood from fishing or operating a beachside motel is likely to go broke waiting to be compensated if he has to go through a long, expensive court fight. And if no financially responsible spiller can be located, it is just like a thief who disappears into thin air with your life savings. There is nothing that can be done about it.

Under H.R. 85, liabilities and responsibilities are clearly delineated. Separate oil and chemical funds are established out of which cleanup expenses can come, and if an innocent victim of a spill is not rapidly compensated by a spiller, compensation can be claimed from the fund. I think it is a fair and equitable approach, and it is one which recognizes that the cost of doing business in the oil and chemical industries must cover the inevitability of accidental spills. No matter how careful and responsible the industry is—and most of the industry is careful and responsible—spills have and will occur. We can best prepare for those incidents by establishing a comprehensive liability and compensation system in advance of the next catastrophe.

Mr. Chairman, in the last decade the Congress has approved a long list of landmark measures to protect the environment and public health and we are starting to reap the benefits of those actions. Legislation concerning the problems of oil and chemical spills, and the problem of abandoned waste disposal sites which will be considered in H.R. 7020, are yet unfinished on our agenda. I am convinced that these problems are some of the most serious we will face on the domestic front in the 1980's, and we can start today by passage of a comprehensive liability and compensation system. We owe it to ourselves and to all the victims—past and future—of oil and chemical spills.

● Mr. GILMAN. Mr. Chairman, I rise in support of the amendment to H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act of 1980, being offered by my distinguished colleague from New York (Mr. Peyser).

The amendment being offered by my colleague would provide $10 million from the title III chemical spill fund for the cleaning up of PCB deposits in our Nation's rivers.

Mr. Chairman, the Hudson River is in danger. The entire river has probably one of the worst problems of PCB deposits along its banks and the longer one delays in its cleanup, the more complicated and expensive it becomes—simply because the deposits break up and filter into the entire body of water. The means to extract the deposits from the river are readily available. It is now merely a matter of the Congress showing its concern and recognition of the true extent of the damage. The $10 million fund proposed is not too much funding for something so imperative. Indeed, it is still far short of what is actually needed to complete the job.

Accordingly, I support this amendment and urge my colleagues on both sides of the aisle to vote in favor of this amendment which is a first and important step toward cleaning up our Nation's rivers.●

[NOTE: Mr. Fish's and Mr. Bowen's remarks were printed in the Extensions of Remarks, Sept. 22, 1980, pp. E4498-E4500.]

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

● Mr. FISH. Mr. Chairman, I rise in strong support of the Peyser amendment to H.R. 85.

The purpose of the Comprehensive Oil Pollution Liability and Compensation Act, as ably expressed by my colleagues in their debate, is to provide an industry-financed cleanup fund for oil and hazardous substance spills in navigable waterways throughout the United States. The funds will replace all other Federal funds for similar purposes. This is vital legislation, and as one concerned with the state of our environment for many years, I wholeheartedly support H.R. 85.

The bill as approved by both the Public Works and Merchant Marine Committees provided funds for future spills of oil and hazardous substances, as well as money for toxic pollutants presently found in our waterways. Unfortunately, the Ways and Means Committee version, as embodied in the Breaux substitute, effectively removes the authority to clean up in-place pollutants.

The problems of kepone, mercury, and PCB's in our Nation's waters have long been well documented. Efforts have been made to clean up these substances, but there is much that remains to be done. The James River in Virginia still contains harmful amounts of kepone. The Great Lakes have deposits of hazardous sediments that must be removed. The Chesapeake Bay, recently the subject of articles in the Washington Post regarding its lost beauty, still suffers from kepone pollution. And the Hudson River, supplying water to much of central New York State and New York City, continues to pose serious health hazards due to PCB pollution.

Unless we restore the measure approved by two of the three committees which considered H.R. 85, we may never remove these in-place toxic substances and restore these vital national and natural resources to their former grandeur or, more importantly, to safe and healthy levels.

The Peyser amendment is very direct in accomplishing its important purpose. The amendment applies only to waterways containing toxic pollutants as of the date of enactment of H.R. 85. It does not increase liability. Use of funds up to $10 million per year is solely at the discretion of the EPA Administrator.

I am happy to report that the Peyser amendment, which will help the Nation resolve may chronic pollution problems, was included in the final-passage version of H.R. 85.●

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

● Mr. BOWEN. Mr. Chairman, I rise in support of H.R. 85 and wish to commend the Committee on Public Works and Transportation and its distinguished chairman, the gentleman from California, for adding to this bill a new section which addresses some very legitimate concerns about the direction of Federal regulatory policies as they pertain to water pollution control. Clarifying language contained in title II of this bill restores the original intent of Congress by specifying that the Secretary of the Army alone shall make any determinations under section 404 of the 1972 Federal Water Pollution Control Act.

As a result of executive action and judicial review, Federal agencies—such as the Environmental Protection Agency and the U.S. Fish and Wildlife Service—have become involved in the section 404 process in a way never intended by the Congress. The section 404 process, unfortunately, has evolved from one of regulating water pollutant activities to one of preventing incursions into wetlands regardless of costs. It also has created a duplication of effort, and, too often, allows specific interest agencies and groups to impede development.

This kind of agency involvement has placed tremendous financial, as well as timing burdens on a number of important State public works projects. For example, in my own State, I can cite at least four vital highway projects the cost of which have skyrocketed and the time schedules for which have been significantly delayed becaue of objections raised by these agencies. In one particular instance involving U.S. Highway 78 in Itawamba County, the direct cost of the project was increased by some $5,000,000 as a result of EPA and U.S. Fish and Wildlife Service participation in the process. In addition to the direct costs indicated above, it is estimated that inflation costs associated with the delay will add still another 10 to 20 percent to overall project costs.

The adoption of this legislation including this new subsection will be a great step forward in saving tax dollars, in expediting badly needed public works projects throughout the entire Nation, and in doing away with unnecessary bureaucratic redtape by returning the administration of the section 404 process to the Secretary of the Army where it belongs.

Mr. Chairman, for all these reasons, I strongly urge the adoption of this bill and again I applaud the Committee on Public Works and Transportation for its outstanding work on this important legislation.●

The **Chairman**. The Chair recognizes the gentleman from Kentucky (Mr. Snyder).

Mr. **Snyder**. Mr. Chairman, I just want to take my minute to say that I appreciate so very much the cooperation of the House this afternoon in helping us dispose of this rather complicated bill. It is complicated, and we did move fairly fast.

I want to assure the Members that both sides of the aisle have worked for about 6 years on most of this bill, and I feel that now we have a good bill.

□ 1440

There has been bipartisan cooperation. Certainly the minority has been allowed to participate to the fullest extent and we support this bill as a result. I want to give the best tribute I can to the chairman of the Coast Guard Subcommittee, the gentleman from New York (Mr. Biaggi), and the Water Resources Subcommittee, the gentleman from Texas (Mr. Roberts), for the fine cooperation they have given, and I hope that the House will give a substantial vote of confidence this afternoon, and I thank those gentlemen for the cooperation and for the participation that we have all been allowed to have in what we believe is a good bill.

Mr. **Biaggi**. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we are coming to the close of debate and consideration of all amendments on this legislation. It has been a long pull. It has been some 6 years since we embarked on this undertaking. It is fortunate that we seem to be doing this in tandem with H.R. 7020. It is Congress' response to the Nation's needs so far as pollution is concerned. Both of them are most comprehensive, dealing with critical matters. H.R. 85, the predecessor legislation by some 5 years, has suffered its ups and downs, and the Members who have been involved with it during that arduous period have had the patience and fortitude to persist, and we are delighted that we have come to this point.

I would be remiss if I did not recognize the contribution and the invaluable assistance that we received from the gentleman from Texas (Mr. Roberts), who is serving his last term and will not be with us in the next Congress. Of his own volition, he seeks to retire. But it is most appropriate that he affixes his name and label to this landmark legislation. We have had an extraordinary relationship. We have never involved ourselves with the esoteric arguments. The question was practical application, how can we implement this notion, how can we transform it into reality. And, notwithstanding all of the obstacles—and I can assure you that there were many from many quarters—we reconciled the differences and overcame the obstacles.

From all of the elements involved, all of the component people involved and their representatives, even they participated. They were hostile at the outset. With some reconciliation, with some thought and persuasion, they are in a unified position in support of this legislation.

A special thanks goes to my colleague, the gentleman from Massachusetts (Mr. Studds), who, like myself, worked tirelessly; and, of course, the gentleman from Kentucky (Mr. Snyder), the members of the committee and the staff. Without the heroic work of the staffs of all of the members of the various committees, we could not have reached this point today.

I also wish to mention the gentleman from Louisiana (Mr. Breaux), whose contribution was essential.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Bennett) having resumed the chair, Mr. Natcher, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, pursuant to House Resolution 772, reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The question is on the passage of the bill.

Mr. SNYDER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 288, nays 11, not voting 133, as follows:

YEAS—288

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Archer
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Bolling
Boner
Bonior
Bonker
Bowen

Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Coughlin
D'Amours
Daniel, Dan
Daniel, R.W.
Danielson
Dannemeyer
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Farraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Gaydos
Gephardt
Giaimo
Gillman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Harkin
Harris
Hightower
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kildee
Kostmayer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCloskey
McCormack
McHugh
McKay
McKinney
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Michel
Mikulski
Miller, Ohio
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Sawyer
Scheuer
Schroeder
Schulze

Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stark
Stewart
Stokes
Stratton
Studds
Swift
Tauke
Tauzin
Taylor
Traxler
Trible
Udall
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wolff
Wolpe
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki

NAYS—11

Ashbrook
Collins, Tex.
Crane, Daniel
Gramm
Kelly
McDonald
Paul
Stenholm
Stump
Synar
Wyatt

NOT VOTING—133

Abdnor
Addabbo
Alexander
Anderson, Ill.
Andrews, N.C.
Anthony
Applegate
Barnard
Beard, Tenn.
Bethune
Boland
Bouquard
Brooks
Brown, Ohio
Cavanaugh
Chappell
Cheney
Cleveland
Corman
Cotter
Courter
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Derrick
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Findley
Ford, Tenn.
Fuqua
Gibbons
Gingrich
Goodling
Grassley
Gray
Hammerschmidt
Hanley
Hansen
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Huckaby
Hutto
Ireland
Jenrette
Johnson, Colo.
Jones, N.C.
Kazen
Kemp
Kindness
Kogovsek
Kramer
Leach, La.
Lederer
Lent
Lloyd
Luken
McClory
McDade
McEwen
Maguire
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Miller, Calif.
Mineta
Mitchell, N.Y.
Montgomery
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nelson
Nichols
Pashayan
Pepper
Pritchard
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Satterfield
Skelton
Snowe
St Germain
Stanton
Steed
Stockman
Symms
Thomas
Thompson
Ullman

Van Deerlin
Vento
Wampler
Whitley
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wirth
Wright
Wydler
Yates
Young, Mo.
Zeferetti

☐ 1450

The Clerk announced the following pairs:

Mr. Addabbo with Mr. McClory.
Mr. Zeferetti with Mr. Stanton.
Mr. Richmond with Mr. Rousselot.
Mr. Rodino with Mr. Railsback.
Mr. Alexander with Mr. Quillen.
Mr. Hawkins with Mr. McEwen.
Mr. Pepper with Mr. Edwards of Alabama.
Mr. Montgomery with Mr. Brown of Ohio.
Mr. Murphy of Illinois with Mr. Abdnor.
Mr. Nedzi with Mr. Beard of Tennessee.
Mr. Mineta with Mr. Hammerschmidt.
Mr. Mica with Mr. Harsha.
Mr. Mazzoli with Mrs. Heckler.
Mr. Nichols with Mr. Kemp.
Mr. Russo with Mr. Findley.
Mr. Santini with Mr. Bob Wilson.
Mr. Skelton with Mr. Davis of Michigan.
Mr. St Germain with Mr. Cleveland.
Mr. Steed with Mr. Kindness.
Mr. Lloyd with Mr. Hinson.
Mr. Kazen with Mr. Lent.
Mr. Jones of North Carolina with Mr. Wydler.
Mr. Jenrette with Mr. Williams of Ohio.
Mr. Howard with Mr. Symms.
Mr. Huckaby with Mr. Thomas.
Mr. Ireland with Mr. Rudd.
Mr. Fuqua with Mr. Regula.
Mr. Hanley with Mr. Rinaldo.
Mr. Edwards of California with Mr. Pritchard.
Mr. Early with Mr. Mitchell of New York.
Mr. Dixon with Mr. Pashayan.
Mr. de la Garza with Mr. Hillis.
Mr. Anthony with Mr. Grassley.
Mr. Applegate with Mr. Bethune.
Mr. Boland with Mr. Cheney.
Mr. Barnard with Mr. Courter.
Mr. Cotter with Mr. Philip M. Crane.
Mr. Corman with Mr. Gingrich.
Mr. Chappell with Mr. Goodling.
Mr. Brooks with Mr. Kramer.
Mrs. Bouquard with Mr. McDade.
Mr. Dodd with Mr. Johnson of Colorado.
Mr. Derrick with Mr. Hansen.
Mr. Ratchford with Mrs. Snowe.
Mr. Roe with Mr. Stockman.
Mr. Wirth with Mr. Wampler.
Mr. Whitley with Mr. Erlenborn.
Mr. Vento with Mr. Maguire.
Mr. Van Deerlin with Mr. Luken.
Mr. Satterfield with Mr. Nelson.
Mr. Matsui with Mr. Mattox.
Mr. Mavroules with Mr. Mottl.
Mr. Murphy of New York with Mr. Myers of Pennsylvania.
Mr. Yates with Mr. Charles H. Wilson of California.
Mr. Thompson with Mr. Ullman.
Mr. Lederer with Mr. Holland.
Mr. Kogovsek with Ms. Holtzman.
Mr. Cavanaugh with Mr. Andrews of North Carolina.

Mr. Daschle with Mr. Davis of South Carolina.
Mr. Mathis with Mr. Moorhead of Pennsylvania.
Mr. Miller of California with Mr. Rahall.
Mr. Wright with Mr. Gray.
Mr. Ford of Tennessee with Mr. Evans of Georgia.
Mr. Young of Missouri with Mr. Leach of Louisiana.
Mr. Hutto with Mr. Gibbons.
Mr. Hefner with Mr. Heftel.

Mr. Charles Wilson of Texas changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

II

96TH CONGRESS
2D SESSION

H. R. 85

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, JUNE 12), 1980

Read twice and referred to the Committee on Environment and Public Works

AN ACT

To provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act".

TITLE I—OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 521 of this Act;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 103(b)(5) of this title;

(o) "navigable waters" means the waters of the United States, including the territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility, and in the case of an offshore facility, the term includes the operating holder of a leasehold interest or permit for the exploration of oil;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Pollution Liability Trust Fund established in title V of this Act.

(b) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) injury to, or destruction of, natural resources; and

(4) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period be-

ginning on the date the claimant first suffered such loss.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under item 2 by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 3, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this

item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 4, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under items 2 through 4, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants, except that where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port only condition (B) of this paragraph shall be applicable to that claim; and

(6) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (6) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(bb)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $1,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of this Act, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(bb), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided,* That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this Act to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility. In the case of an owner who is the holder of a leasehold interest or permit for the exploration of oil offshore, evidence of financial responsibility established for the leasehold to meet the maximum liability applicable under paragraph (1) of this subsection shall cover the liability of that owner for all facilities located on the leasehold.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a

water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts as the Secretary, by regulation, shall establish, but in no event less than $1,000,000.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

(d) The total liability under this title of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility under this title, except that nothing in this subsection shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.

DESIGNATION AND ADVERTISEMENT

SEC. 106. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims for compensable damages under title V of this Act shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106(b), or

(2) where the owner or operator may recover under section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) adver-

tising was commenced pursuant to section 106(a)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of claims for compensable damages under title V, to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim for compensable damages under title V presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsections (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 108(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The

Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.

In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive;

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss which is a compensable damage under title V, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. There are authorized to be appropriated for those fiscal years which begin on or after October 1, 1980, such sums as may be necessary to carry out the provisions of this title.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of this title during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of, and the administration of the liability provisions of, this title.

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, That the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made. In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment of taxes under section 541(d)(1)(A) of this Act, such owner of oil shall compute, based upon accepted accounting procedures,

what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of the advance tax payment credited under title V of this Act. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska.

(4) The amount of any TAP fund surplus not used as an advance payment under section 541(d) shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The fund referred to in section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and insert-

ing in lieu thereof "person in charge, or employer of such person in charge,".

(5) Subparagraph (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund referred to in subsection (k) of this section or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund referred to in subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsec-

tion (l) is further amended by striking out "subsections (c) and (i)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(l) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu

thereof "fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

Sec. 203. No part of any moneys in the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 204. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE III—HAZARDOUS SUBSTANCE LIABILITY, COMPENSATION, AND FUND

HAZARDOUS SUBSTANCE LIABILITY

SEC. 301. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"(19) 'ship' means either of the following types of vessels carrying oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazadrous substance in bulk as cargo or in residue:

"(A) a self-propelled vessel, or

"(B) a non-self-propelled vessel other than an inland oil barge;

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (l) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(3) Paragraph (5) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out "the Canal Zone,".

(b) Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil and Hazardous Substances Pollution Liability and

Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, in violation of subsection (b)(3) of this section may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(C) injury to, or destruction of, natural resources; and

"(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

In any case where the discharge of a hazardous substance is not in violation (b)(3) of this section all removal costs for such discharge shall be paid from the fund referred to in subsection (k) of this section and no other person shall be liable for any part of such costs, notwithstanding any other provision of this section to the contrary.

"(2) A claim authorized by paragraph (1) may be asserted—

"(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): Provided further, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under item (B) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (C) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (D) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under items (B) through (D) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(F) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (F) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2), (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willfull misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(5) In addition to the processing and settling of claims under subsection (s) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $10,000,000 shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. No pollutants removed pursuant to this paragraph shall be placed in any landfill unless the Administrator first determines that disposal of the pollutants in such landfill would provide a higher standard of protection of the public health, safety, and welfare than disposal of such pollutants by any other method including, but not limited to, incineration or a chemical destruction process.

"(i)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided,* That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k) There is in the Treasury of the United States a fund known as the Hazardous Substance Pollution Liability Trust Fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

SEC. 302. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss, which is a compensable damage under title V of the Comprehensive Oil and Hazardous Substances, Pollution Liability and Compensation Act, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection, the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recoverable under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the fund shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

(c) Paragraph (3) of subsection (p) of section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new sentence: "The total liability under this section of any guarantor shall be limited to the aggregate amount which such guarantor has provided as evidence of financial responsibility under this section, except that nothing in this sentence shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.".

SEC. 303. Nothing in this Act or the amendments made by this Act shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 304. Nothing in this title and nothing in the amendments made by this title, other than the application of these provisions to removal costs, shall be applicable to the use or the supervision of use of any pesticide (including one classified for restricted use) by any person who is a private applicator within the meaning of section 2(e)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. Except in the case of removal costs, the use of pesticides by any such person shall be subject to section 311 of the Federal Water Pollution Control Act as in effect prior to the effective date of this title. Any person having a claim for damages for economic loss incurred on or after the effective date of this title as the result of the use or supervision of use of a pesticide by such a private applicator shall assert such claim in accordance with the provisions of this title and the amendments made by this title except that the Hazardous Substance Pollution Liability Trust Fund shall be the sole source liable for the payment of such claim.

SEC. 305. This title and the amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE IV

SEC. 401. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of titles I through IV of this Act or of any amendment made by titles I through IV of this, Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE: AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 511. IMPOSITION OF TAXES.

GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subpart A—Tax on Petroleum

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definitions and special rules.

"SEC. 4601. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) Tax on Certain Uses and Exportation.—

"(1) In general.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) Exception for use on premises where produced.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) Persons Liable for Tax.—

"(1) Crude oil received at refinery.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) Imported petroleum products.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section

638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section

4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—

"(A) IN GENERAL.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene; butylene; butadiene; butane; propane; benzene; toluene; xylene; naphthalene; methane; carbon black; ethane.

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which is a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. ENVIRONMENTAL TAXES.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

PART I—ESTABLISHMENT OF TRUST FUNDS

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

SEC. 552. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act, and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the

costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

PART II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, such person's gross income from activities which utilize the property or natural resources referred to in paragraph (1)(D), exceeds; and

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned

to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 532(a), the amount in any Trust Fund shall be the sum of any cash in such Trust

Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) GENERAL RULE.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the amount in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund estalished by this subtitle.

(b) BORROWING FROM GENERAL FUND OF TREASURY.—

(1) PROHIBITION.—Except as provided in paragraph (2), nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

(2) FIRST YEAR AUTHORITY.—

(A) IN GENERAL.—There are authorized to be appropriated to each Trust Fund established by this subtitle, as repayable advances, such sums as may be necessary to carry out the purposes of such Fund.

(B) LIMITATIONS.—

(i) The maximum aggregate amount which may be appropriated pursuant to subparagraph (A) to any Trust Fund may not exceed $75,000,000.

(ii) No advance may be made under this paragraph after September 30, 1981.

(C) REPAYMENT OF ADVANCES.—Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in section 534(b)(2) and shall be compounded annually.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund

established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title,

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of such titles) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as the "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-

Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution,

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Passed the House of Representatives September 19, 1980.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.